federal register

Monday
August 24, 1987

Part VI

Department of the Interior

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Parts 211, 212, and 225

Contracts for Prospecting and Mining on Indian Lands; Oil and Gas and Geothermal Contracts

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: This final rulemaking adopts rules and regulations implementing the Indian Mineral Development Act of 1982. In addition, the rulemaking revises existing rules and regulations in 25 CFR Part 211 governing mining on tribal lands, and removes 25 CFR Part 212 which governs mining on allotted Indian lands. A new Part 225 is added to govern oil and gas development contracts and leases from other mineral development. The regulations in existing Part 212 governing mineral development on allotted Indian lands are subsumed in the regulations in Parts 211 and 225.

EFFECTIVE DATE: This document is effective September 23, 1987.

ADDRESS: Joseph Johnston, Chief, Division of Energy and Mineral Resources, Bureau of Indian Affairs, 1951 Constitution Avenue NW., Room 4529, Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Don Aubertin or Dick Cramer Bornemann (303) 236–2660, Lakewood, Colorado, or Joseph Johnston (202) 343–3722, or Thornton Field, Office of the Solicitor (202) 343–9331, Washington, DC.

SUPPLEMENTARY INFORMATION: The principal authors of this final rulemaking are Don Jones and Dick Cramer-Bornemann of the Division of Energy and Minerals Resources, Bureau of Indian Affairs.

Pursuant to the mandate in section 8 of the Indian Mineral Development Act (Act) (96 Stat. 1940; 25 U.S.C. 2107), the Bureau of Indian Affairs (BIA) published a Notice of proposed rulemaking in the **Federal Register** on July 12, 1983 (48 FR 31978) intended to implement the 1982 Act. In addition to implementing the Act, the proposed rulemaking included a revision and reorganization of regulations governing mining and oil and gas leases adopted pursuant to the Act of May 11, 1938 (52 Stat 347, 25 U.S.C. 396a-g), which governs the leasing of tribally-owned minerals, and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396), which governs the leasing of individually-owned minerals on allotted lands. The proposed rules, governing leasing under the 1938 and 1909 Acts, incorporated many changes suggested by interested parties in response to proposed rules published in 45 FR 53164 on August 11, 1980, which were not adopted as final rules. In the July 12th document, the comment period was set for 60 days, ending September 12, 1983. However, on September 11, 1983, the comment period was extended for 30 additional days. A total of 67 separate comments was received from a variety of sources, including Indian tribes and organizations, mining and oil and gas companies, trade organizations and Federal agencies.

General Comments

The majority of the commentators were of the opinion that the proposal provided a workable regulatory scheme for implementing the purposes of the 1982 Act. Most commentators offered recommendations for technical corrections or editorial changes, and in some cases, proposed substantive changes. However, some commentators offered strong objections to two aspects of the proposal which are discussed herein.

Several industry commentators expressed concern that, as proposed, the regulations would subject mining leases, entered into pursuant to the 1938 Act, to requirements which rightfully should only be applicable to minerals agreements under the 1982 Act, thereby diminishing rights which lessees currently possess. They contended that the 1982 Act is intended to give Indian mineral owners greater flexibility in negotiating mineral contracts, while at the same time allowing the procedures for negotiating leases pursuant to the 1938 Act to remain intact. They cited in support of this, section 6 of the 1982 Act, which provides that "(n)othing in this Act shall affect the Act of May 11, 1938". They argued that the proposed regulations failed to distinguish between negotiated leases under the 1938 Act and those used as a part of a business arrangement sanctioned under the 1982 Act. The contention was made, for example, that some provisions of the regulations would subject existing 1938 Act leases to review of the entire lease, using the criteria established for the approval of mineral agreements under the 1982 Act, and urged that such provisions be deleted. Other examples were given which will be discussed below. The commentators ask that the BIA clearly explain its understanding of the relationship between leasing of minerals under the 1938 Act and negotiated leases under the 1982 Act.

The 1938 Act authorizes development of tribal mineral resources through a formalized lease conditioned upon competitive bidding for oil and gas development, royalty and rental provisions, limitations on acreage and a term of not more than ten (10) years and so long thereafter as minerals are produced in paying quantities.

Enactment of the 1982 Act removed the restriction which required competitive bidding for oil and gas agreements, thereby giving tribes full discretion on how their mineral resources will be marketed. In addition, and very importantly, the restriction as to form of agreement (lease) was removed. As a result, tribes may enter into any joint venture, operating, production sharing, service, managerial, lease or other agreement. Finally, the acreage limitation was removed and the term is not limited. Therefore, the 1982 Act gives full discretion for mineral development on tribal lands to the governing body of that tribe, subject to any limitation or provision contained in its constitution or charter, and a determination by the Secretary that the agreement is in the best interest of the tribe.

Common to both Acts is the requirement of Secretarial approval of a lease, in the instance of the 1938 Act; or other form of contractual agreement, in the instance of the 1982 Act. Tribes have the option to elect either act in conjunction with contemplated development.

It should be noted that, while tribes have the option to proceed under either Act, there are distinct differences between the two Acts. For example, oil and gas leases issued pursuant to the requirements of the 1938 Act are generally standardized leases executed on standard BIA forms. Such leases are subject to all of the requirements contained in regulations issued by the BIA, the Bureau of Land Management (BLM) and the Minerals Management Service (MMS). Similarly, any lease negotiated pursuant to the 1938 Act will be standardized to the extent that the lease must conform to the lease offer made in the sale notice, *i.e.*, it must be for a term of not more than 10 years, absent production in paying quantities; it must provide for a fixed royalty and a specified rental; and the acreage leased must not exceed limitations imposed by regulations.

However, mineral agreements, including leases, approved under the 1982 Act, need not be subject to the same constraints as leases negotiated under the 1938 Act. For example, 1982 Act agreements are not limited to a maximum 10-year term, absent production in paying quantities. Also, there are no regulatory acreage limitations applicable to agreements under the 1982 Act.

In summary, it is clear that the provisions of the 1982 Act give tribes much more latitude and flexibility in the types of development agreements into which they may enter.

The authority under existing law for allottees or owners of undivided interests in Indian allotted lands to lease their lands for mining purposes is somewhat different than that granted Indian tribes. The 1909 Act authorizes the Secretary to require competitive bidding in instances where the original allottee is deceased and the heirs either have not been determined or, if determined, cannot be located. As a matter of policy, since 1957, the Secretary has, by regulation, required that the competitive lease sale procedure be followed for all oil and gas leasing on allotted lands. However, on some limited occasions, the requirement has been waived upon request and allottees have been authorized to negotiate mining leases without competitive sales when the BIA has determined that, under the circumstances, a waiver of this requirement was in the best interest of the Indian owners.

Congress could have authorized allottees to negotiate mineral agreements when it passed the 1982 Act, but it did not. Instead, the 1982 Act only authorizes allottees to include their interest in a tribal mineral agreement, with the consent of the parties to the agreement, and with approval of the Secretary of the Interior.

In summary, the BIA understands the differences between leasing under the 1938 Act and the 1982 Act to be as follows:

(a) Tribes may lease minerals other than oil and gas, under either Act, except that leases issued under the 1982 Act are to be subject to the procedures for review and approval by the Secretary set forth in section 4 of the Act as implemented by the rules in Subpart A of 25 CFR Part 211.

(b) Tribes may enter into oil and gas leases or agreements under either Act. Leases or agreements executed pursuant to the 1938 Act must first be offered for sale by competitive bidding. After the receipt of bids and their rejection, tribes may enter into negotiated leases or agreements with the approval of the Secretary.

If the agreement is negotiated under the 1938 Act, all provisions of that Act shall apply.

(c) Individually-owned Indian trust lands may be included in the 1982 Act tribal agreements with the consent of the parties and the approval of the Secretary, but allotted lands may not be included in such agreements which do not provide for participation of tribal lands.

(d) Allotted lands may continue to be leased pursuant to the 1909 Act.

(e) Oil and gas leases of allotted lands under the 1909 Act will continue to be made by competitive bidding, unless this requirement is waived by the Secretary of the Interior on a case-by-case basis to allow leasing by negotiations.

In response to the concern expressed by some industry commentators (i.e., that the BIA appears to be proposing that the requirements of the regulations intended to implement the 1982 Act, as set forth in Supbart A of Parts 211 and 225, apply to existing leases executed prior to the effective date of the new regulations), the BIA wishes to make clear its position that the procedures and requirements in the regulations pertaining to mineral agreements apply prospectively and only in those instances where the parties have elected to proceed under the 1982 Act. The basis of this conclusion is the absence in the statute or in the legislative history of the 1982 Act of any indication that Congress intended to retroactively impose the procedures for the Secretarial review and approval of mineral agreements on existing leases executed under the 1938 Act, or that such procedures should apply to new leases executed under the 1938 Act or the 1909 Act. Consequently, the proposed rules are revised to eliminate or modify any provisions which may be ambiguous in this respect. These changes are discussed below in the analyses of comments received on each section of the proposed rules.

A number of industry commentators questioned the propriety of combining in one set of regulations rules governing mineral operations under the 1982 Act and revisions to existing rules governing operations under the 1938 Act and the 1909 Act. These commenters complain that the BIA failed to explain the reason for the changes affecting the leasing regulations under the 1938 Act. They recommended that the proposed rules be withdrawn and new proposed rules implementing the 1938 Act be promulgated separately.

The BIA acknowledges that the preamble to the proposed rules did not explain in detail the reasons for changes to the existing rules, and such explanations are provided herein in the section-by-section analysis of the rules. The BIA should have pointed out that these changes are based upon extensive comments received on proposed rules published in the **Federal Register** on August 11, 1980 (45 FR 53165). That proposal, in turn, constituted a republication of an April 5, 1977 proposal, (published in 42 FR 18083), with substantive revisions. As noted in the preamble to the April 1977 proposal, the initial impetus for revision of the regulatory scheme then in existence was provided by the Secretary of the Interior in a June 1974 decision on a petition by an Indian tribe to rescind certain leases on tribal lands. The Secretary concluded the decision with a directive to the Solicitor to rewrite the regulations then in effect "to correct their present ambiguities" in order "to better fulfill my responsiblity to assure the protection of Indian culture and environmental interests as well as to allow the maximum development of Indian natural resources." Thus, the effort to revise the BIA's mining regulations is of long duration and further delay is unwarranted. The BIA has determined not to republish the revisions for a fourth time. It is believed the revisions made in the final rules will eliminate the commentators' objections to the proposed rules.

Another general comment was that the proposed rules did not set forth rules governing mineral agreements for the development of geothermal resources on Indian lands. They noted also that it was unclear from reading the proposal which of the two parts governed geothermal operations, since both Parts 211 and 225 contained reference to geothermal. The BIA agrees with this criticism and in response has corrected Part 211 to make it clear that Part 211 governs minerals other than oil and gas and geothermal. In addition, Part 225 is revised to make it clear that geothermal operations are governed by its provisions. A description of a regulatory scheme for geothermal operations is set forth in the discussion of Part 225.

As a result of changes made in response to comments received, a number of sections have been moved to other locations in the parts and the subsequent sections have been redesignated. In addition, some new sections have been added. Finally, minor editorial changes have been made to correct grammatical errors and/or omissions. For the purposes of discussion, reference will be made to section designations in the proposed rules.

DISCUSSION

A. Part 211—Contracts for Prospecting and Mining on Indian Lands (Except Oil and Gas and Geothermal)

Sec. 211.1 Purpose and scope.

Two industry commentators objected to the statement in paragraph (a) of this section that the regulations are intended to ensure that Indian owners desiring to have their minerals developed receive "at least fair market value" for their resources. They content that the concept of fair market value is highly subjective and its inclusion in the regulations could serve as a basis for later attempting to unjustifiably reform the terms of a contract, especially if the economic benefits from the contract are not as expected due to events or conditions which none of the parties to the agreement were aware of at the time of contracting. They contend that the function that might have been intended by this clause is covered by § 211.6(b) which provided that a proposed agreement must be reviewed to determine if it is in the best interest of the tribe, and that this review includes an analysis of the potential economic return to the tribe. They ask that this entire clause be deleted. While the commentors may be correct that the uniqueness of these agreements and the difficulties with finding comparables for comparison purposes may make a fair market valuation difficult to perform, such a review is still desirable and essential for the approving official to make to assure the agreement is a prudent one. The difficulty in performing such an analysis is not sufficient justification for not trying. The Act itself envisions the reviewing official will perform an economic analysis when it is appropriate and feasible. Fair market value is a well established, and appropriate yardstick for determining whether the Indians involved in a minerals agreement are receiving adequate compensation for the disposal of their non-renewable resource.

A number of industry commentators strongly objected to paragraph (c) which they contend unilaterally gives the BIA the right to require revisions to the provisions of any agreement (except the terms, royalties, rentals, and acreage) executed prior to the effective date of the new regulations. One commentor stated that once a contract has been approved, *no* terms can be amended except by agreement of all parties, and that the provision lacks any statutory authority and may be unconstitutional.

It is important to note that the economic bargain struck by the parties is not subject to unilateral change by rulemaking. The intent this section is to permit the Department the needed flexibility to change the operational aspects of administering and supervising these contracts, over time, to conform with changing circumstances. For example, as experience gained with the bonding requirement, it may be appropriate to set minimums. Likewise, information collection requirements may change as experience dictates. This type of operational flexibility is essential.

The commentators also appear to have overlooked the fact that language in paragraph (c) has been included in the BIA's regulations since December 1957, if not earlier, and also has been a provision in the BIA's standard lease forms for a number of years. (See 25 CFR 211.18). Yet no instance is cited by the commentators wherein the BIA has revised the terms of a mineral contract to the detriment of a party to the contract through the process of promulgation of new or revised regulations. As to statutory authority for such a provision, Section 8 of the 1982 Act directs the Secretary of the Interior to promulgate rules and regulations to implement the Act and to consult with national and regional organizations and tribes "* * * both in the intitial formulation of rules and regulations and any future revision or amendment of such rules and regulations." Had the Congress desired to exempt existing agreement from the application of revisions or amendments to the regulations, it could have done so in this section. The BIA interprets the absence of any such limitation as meaning that the Congress acquiesces in the long-standing practice of including such a provision in its rules and in standard lease forms. Therefore, the recommendation that this provision be deleted or modified to state that no regulations shall affect the terms of a contract without the agreement of all the parties is not accepted.

At the suggestion of the Office of Surface Mining Reclamation and Enforcement (OSMRE), a new paragraph (d) is added to indicate that mining operations for coal are governed by applicable regulations of that office.

A new paragraph (e) has been added at the request of some tribes who criticized the regulations for failing to include a provision recognizing that Congress has granted tribes the authority to regulate mining operations on Indian lands under the Indian Reorganization Act and other acts.

Sec. 211.3 Definitions.

The BIA has accepted the suggestion by several commentators that all applicable definitions should be set forth in one location. All of the definitions located in Section 211.33 in the proposed rules are now found in § 211.3. In addition, the definitions of "oil" and "gas" and "geothermal" which were included in § 211.3 have been moved. A number of comments were received pertaining to the definition of "minerals agreement." Industry commentators urged that the definition be amended to make it clear that it does not apply to amendments of leases entered into pursuant to the 1938 and 1909 Acts. The proposed definition is patterned after the language in section 3(a) of the 1982 Act. That language, of course, does not contain the phrase "(other than a lease entered pursuant to the Act of May 11, 1938, and the Act of March 3, 1909)" after the word "leases." This phrase is added to make it clear that leases entered into pursuant to the 1982 Act are included in the definition of mineral agreements, and leases entered pursuant to the 1938 Act and the 1909 Act are excluded from the definition.

The industry commentators urge that the definition be amended to read "* * * lease (other than a lease, *or* amendment thereto, entered into pursuant to the Act of May 11, 1938, and the Act of March 3, 1909) * * *." As discussed *ante* under General Comments, the BIA believes that Congress intended the 1938 Act to remain as an alternative means whereby Indian mineral owners could dispose of their mineral resources, but there is nothing in the legislative history of the 1982 Act to indicate that Congress intended retroactively to apply the procedures for Secretarial review and approval in the 1982 Act to leases issued pursuant to the 1938 Act. The BIA believes the same reasoning applies to an amendment of a lease issued under the 1938 Act. In other words, the BIA agrees with one comment that "the 1982 Act does not transform 1938 Act leases into minerals agreements and there is no statutory basis to do so in the proposed regulations." Consequently, this recommended change has been accepted. Several commentators pointed out that although the term "contract" was used throughout the proposed regulations, the term was not defined. They suggested that "contract" should either not be used or a definition of the term should be included in the regulations.

It should be noted that "contract" is used in the text exclusively in Subpart C of the two parts which contain provisions applicable to mineral agreements under the 1982 Act, and competitive leases under the 1938 and the 1909 Acts. The term "contract" was chosen because of the need to find a commonly understood term which encompasses a mineral agreement (which includes "leases"), and competitive leases under the other Acts. The BIA believes that defining "contracts" is unnecessary if the public understands that it is simply a general term covering any type of document pertaining to the development of Indian mineral resources under any one of the three acts.

Subpart A—Minerals Agreements

Sec. 211.4 Authority to contract. (renumbered as § 211.5)

Two comments were received indicating that it will be detrimental to individual Indians owning allotted lands not to be able to enter into a lease or agreement pursuant to the 1982 Act without joining in tribal agreements. They suggest that many times these lands are not adjacent to tribal lands and the allottee does not have a right to negotiate under the proposed rules. The commentators ask that additional provisions be added to this section to cover this situation. While the BIA sympathizes with this comment, it is nevertheless precluded from doing so in section 3(b) of the 1982 Act, which states that individual Indian owners of mineral interests "* * * may include such resources in a tribal Minerals Agreement * * *." The legislative history of the Act supports this position. Earlier versions of the bill which became the 1982 Act provide that tribes *and* individual Indians could enter into such agreements. However, the final bill was amended to delete this authorization as to allottees. Consequently, the requested amendment cannot be made.

An editorial change was made to paragraph (a).

Sec. 211.5 Negotiation procedures. (renumbered as § 211.6)

Comments on paragraph (b) were received from both Indian representatives and industry. The Indian commentators made suggestions for additional provisions. On the other hand, industry commentators recommended that the section be amended to provide only that no particular form of agreement is prescribed. They contend that a list of factors to be considered is unnecessary and that the likely effect will be a requirement that such factors be included in all agreements. The industry commentators misconstrue the purpose of this paragraph. This provision is included at the request of Indian representatives who reviewed a preliminary draft of the regulations and felt that some guidance should be provided tribes who were not familiar with these types of agreements and may wish to know the factors which need to be taken into consideration in the negotiating process. The provisions listed are those in a typical mining contract. It is not intended that these provisions should be construed as constituting a "model agreement," nor should they be regarded in any way as criteria which must be included in the agreement in order to obtain Secretarial approval. The criteria for approval of agreements is set forth in Section 211.6. Consequently, the BIA rejects this argument and this paragraph is not deleted. Two new subsections, (15) and (16), pertaining to a schedule of activities and descriptions of proposed abandonment and reclamation activities, which were suggested by commentators, have been added.

Paragraph (c) has been revised to change "should" to "may" in order to make it clear that consultation with representatives of the Secretary prior to formal execution of an agreement is recommended, but such consultation is not a requirement for obtaining Secretarial review. Also, in response to a comment that § 211.5 contains no "requirements," this sentence is revised to read "requirements of the regulations in this part." Paragraph (d) is revised to change "should" to "shall" inasmuch as the agreement must be forwarded to a representative of the Secretary for review.

Sec. 211.6 Approval of agreements. (renumbered as § 211.7)

Some commentators raised questions concerning the time limit of 180 days after submission, or 60 days after meeting National Environmental Protection Act (NEPA) requirements in paragraph (a), within which a proposed agreement must be approved or disapproved. They expressed concern that 180 days was too short a period within which to conduct the necessary technical review. They also asked whether these time frames include review by the tribe or does "after submission" refer only to receipt of the proposed review by the Secretary.

These time limits are prescribed by section 4(a) of the 1982 Act. The BIA interprets the phrase "after submission" in section 4(a) of the Act to mean after formal submission of an executed agreement to the Secretary for approval or disapproval. There is nothing in the legislative history to support a contrary intention on the part of Congress. Consequently, no change in paragraph (a) is being made.

Several commentators pointed out that paragraph (c) was inconsistent with § 211.37, in that it required that the written findings "shall" include an economic assessment, whereas § 211.37(a) states that an economic assessment, "where required," shall include the findings set forth. It is the BIA's intention that an economic assessment shall always be made of a proposed new minerals agreement. However, in many instances, amendments, supplements, and modifications of existing agreements may be proposed with very little, if any, effect on the economic aspects of the agreement and shall not require preparation of an economic assessment. Otherwise, the qualifying phrase, "where required," in § 211.37(a) would have no meaning. Accordingly, in order to correct any misunderstanding, the qualifier, "if needed," is used in § 211.7(c).

Numerous unfavorable comments were received from both tribal and industry commentators on the concept of "fair and reasonable remuneration" as set forth in paragraphs (d) and (f). The principal objection to the concept is that it is unworkable and unrealistic. The commentators argue that the definition of "fair and reasonable remuneration" is too inflexible in that it requires the Secretary to find that the return to the Indians is not less than that received by non-Indians or the Federal Government in similar situations. Objectors felt there may not be similar contemporary mining ventures or federal projects which are truly comparable to the types of agreements likely to be developed for Indian lands, and in the absence of such agreements, the Secretary would be placed in an impossible situation.

Some commentators recommended that paragraphs (d) and (f) be deleted in their entirety and that paragraph (e) be amended to provide that the Secretary's determination of whether to approve or disapprove an agreement would be based soley on the written findings required by paragraph (c). Another commentator suggested that paragraphs (d), (e), and (f) were inconsistent with the objectives of the Act and should be revised to provide that the Secretary should take into consideration the factors set forth in paragraph (d), rather than make a determination that such conditions exist. The rationale is that the "determinations" required by section 4(b) of the Act should be based upon the environmental assessment and the economic assessment, if made, and that the Secretary's written findings shall be based upon such determinations.

The BIA has determined that the concept of "fair and reasonable remuneration" should be retained because it is an essential element in determining whether an agreement is in the best interest of the Indian owners, but the regulations setting forth the concept have been revised so that "fair and reasonable remuneration" is not another required written finding in addition to the environmental assessment and the economic assessment. Accordingly, appropriate revisions to paragraphs (d) and (f) have been made.

Paragraph (g) has been revised to require that a copy of the required written statement of the reasons why an agreement should be approved, or not approved, be sent to the Indian mineral owners, as required by the Act.

Subpart B—Mining Lease

The title of this subpart is changed to "Procedures for Competitive Leases," for clarity.

Sec. 211.20 Scope.

A number of commentators expressed some confusion as to what is meant to be covered by this subpart. They note that the phrase "through a competitive bidding procedure" under the 1938 Act implies that the competitive bidding procedures must be followed and that direct negotiation is not allowed. They asked whether or not the BIA intends that 1938 Act leases will continue to be issued via competitive bidding and also through negotiations. They also asked whether the BIA believes that any new lease that is negotiated falls automatically under the 1982 Act, inasmuch as the second sentence of this section states that leases may be negotiated "under the procedures in Subpart A," which are the procedures governing leasing under the 1982 Act.

The existing regulations of the BIA have provided, since 1957, in § 211.2, that leases for minerals other than oil and gas shall be advertised for sale by competitive bidding procedures unless written permission is granted to the Indian owners to directly negotiate for a lease. The BIA believes that this is a sound policy and should be continued. However, a provision setting forth this requirement was omitted from the proposed rules. Section 211.21(a) has been revised to make it clear that tribes may make leases under the 1938 Act, by direct negotiations with the written permission of the Secretary. In addition, the phrase "through competitive bidding procedure" has been deleted.

As explained, *ante*, it is the BIA's position that in enacting Section 6, Congress intended that the requirements of the 1982 Act should apply only to mineral agreements entered into under that Act, and that leasing authorities under the 1938 Act and the 1909 Act are not affected by the 1982 Act. Consequently, to avoid any misunderstanding, the second sentence in § 211.20 has been deleted.

Sec. 211.21 Procedures for awarding leases.

A number of commentators pointed out that the phrase "prospecting and mining leases," which appears twice in paragraph (b), is confusing, as "prospecting leases" is not a term used elsewhere in the rules. This term has been eliminated in the final rules.

The advertising procedure in paragraph (c)(2) would have required that the text of the advertisement include a complete description of the specific tracts to be offered. Upon further consideration, the BIA has concluded that because in many instances a large number of tracts are included in a lease sale, this requirement would result in an unnecessary monetary burden on the public in the light of the high cost of publishing multiple descriptions of individual tracts in local newspapers. Printing costs in one known lease sale were in excess of $6,000. Consequently, the BIA has elected the alternative, whereby specific descriptions of the tracts to be offered for sale will be available at the office of the Superintendent and will be sent to any person listed on the agency's list of persons who have asked to be informed of future lease sales.

Paragraph (c)(5), as proposed, requires a successful bidder to submit the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, all bonds, and the executed leases, within 30 days after notification of the bid award. The rule authorizes the Superintendent to grant an extension of up to 30 days within which to file the executed lease. Some commentators recommended that the 30-day time limit be deleted and "a reasonable time specified by the Superintendent" be substituted for the 30-day limit. One industry commentator justified this proposed change on the grounds that, while the time limit is reasonable, if there are no terms to be negotiated under the bidding procedure, it is inappropriate for the bidder to face potential loss of her/his deposit if the inability to come to terms could be based on the action of the Government or the Indian mineral owner. This argument seems to be reasonable. However, it overlooks the fact that the time for submission only begins to run after it has been determined that the bid is satisfactory and the bidder is apprised of this fact. Thus, it is assumed that a notice to the bidder will not be given unless the proposed terms of the bid have been thoroughly examined and that no further adjustments will be required. However, even in the event that further negotiations may be required, the BIA believes a 30-day extension is sufficient. Consequently, the proposed deletion of any time limit has not been made.

Objections were voiced to the provision in paragraph (c)(5) which would give an Indian mineral owner the option to readvertise a forfeited lease, with a defaulting bidder required to pay the difference between her/his high bid and the high bid received at the sale, plus the cost of advertising for the subsequent sale. The objections were that this provision would be unfair, since it could result in an enormous and unpredictable expense for a bidder where the failure to submit the executed lease and other items was not her/his fault. The suggestion was made that this penalty provision was not practical, inasmuch as subsequent bids in the second sale would likely be lower, not higher.

The BIA has concluded that the objections to this provision, particularly the comment that its effect might be lower bids, are legitimate, and accordingly the provision has been deleted. Defaulting bidders will be required to pay 25 percent of their bonus bid for the use and benefit of the Indian mineral owner.

Some industry commentators suggested that the provision in paragraph (d) that the Secretary shall not award a lease to any bidder until the consent of the Indian owner has been obtained should be deleted. They contend that this requirement is inconsistent with 25 CFR 211.21(c)(5) which requires that the successful bidder must file the completed lease within 30 days, which means the consent of the owner has been obtained. The commentators misconstrue the purpose of this requirement. As the courts have held on many occasions, although the Secretary's approval is required in order to lease Indian land, the Secretary is not the lessor and cannot grant a lease on her/his own authority. See: *Poafpybitty* v. *Shelly Oil Co.*, 390 U.S. 365 (1968). This provision is intended to enforce that holding. Consequently, even though an Indian mineral owner has consented to put her/his interest up for sale, the owner retains the right to decline to accept the highest bid. Similarly, even in the situation where an Indian owner has signed a lease of her/his interest, the owner has the right to withdraw consent to the lease at any time prior to the moment it is approved by the Secretary.

For this reason, the suggested deletion is not accepted.

Sec. 211.22 Duration of leases.

One commentator questioned the implication in this section that the term of a lease entered into by means of the exercise of an option is to be measured from the date of the exercise of the option, and contended that the term should not begin to run until a lease has been fully approved. The argument is that, based upon the commentator's experience, it could take years after exercising an option before a lease is approved, and it is unfair to have the lease's term begin before all approvals have been obtained. This argument is persuasive and the section has been revised accordingly.

Numerous comments were received objecting to the proposed definition of the term "paying quantities" in paragraph (b). Sixteen commentators opposed use of the definition, for a variety of reasons, and urged that it be deleted. First, they pointed out that the definition is predicated on the proposition that "paying quantities" means that in order for a mining venture to have production in paying quantities, there must be a showing that every year of operations results in a profit to the lessee. They argue that this is unrealistic and impractical when applied to the mining of minerals other than oil and gas. Because of the nature of such operations, they contend, it is not uncommon for mines to operate for several years without a profit during the early development period, yet, during those years, the mine continues to be a worthwhile project. In addition, it is not uncommon to suspend production to permit a reduction in stockpiles of materials to an acceptable level. Strikes, delays, and disputes can operate to cause suspension of operations, resulting in a loss of profits in a given year. The objectors contend that given these factors, use of the proposed definition would force most mining companies to abandon any further development on Indian lands, since they would be unwilling to risk their investment in developing a mine, if they knew that one year of depressed prices or unprofitable operations might result in forfeiture of the mine.

One comment was that profitability to the operator is of no concern to the Indian lessor as long as royalties are paid. As long as any minimum royalties specified in the lease are paid the lessor, this commentator felt an operator should be deemed to be producing in "paying quantities." The suggestion was that if the lease failed to specify a minimum rental, it could be negotiated pursuant to § 211.22(d).

Finally, one commentator felt that strict adherence to the proposed definition would work to the detriment of Indian lessors, since it would prevent them from having the flexibility to agree that the lease should remain in effect during unprofitable years, with the expectation that it would be profitable within the foreseeable future.

After considering all the comments opposing the proposed definition, the BIA has concluded that the arguments presented against defining "paying quantities" are persuasive. Consequently, the proposed paragraph (b) has been deleted.

It was also decided that the requirement in paragraph (e) that written evidence showing that minerals are being produced in paying quantities must be filed at the end of each fiscal year is an excessive burden on the public, especially since it is usually evident that production in paying quantities is occurring from other required reports and written proof of that fact is deemed unnecessary. Consequently, proposed paragraph (e) has been deleted.

Paragraphs (c) and (d) of this section which dealt with suspension of operations have been incorporated into a new section numbered 211.47 entitled, Suspension of Operations; Remedial Operations, and are further discussed there.

Sec. 211.23 Forms. (New)

The proposed rules failed to include the existing rules in 25 CFR 211.30 and 212.32 which require that leases, assignments, and other instruments shall be executed on forms prescribed by the Secretary. The BIA has concluded that, inasmuch as competitive leases will continue to be issued under the 1938 and the 1909 Acts, there is a need to include this requirement in the regulations. Consequently, until further notice, competitive leases, assignments, bonds, and permits should be executed on the appropriate form listed below:

Subject matter	Form No.
Assignments	BIA-5429.
Bonds:	
(1) Nationwide	BIA-5438.
(2) Statewide	BIA-5430.
(3) Lease Bond	BIA-5427.
(4) Assignees Bond	BIA-5435.
(5) Lessee Bond Supported by Government Securities.	BIA-5426.
Evidence of Authority of Officers to Execute Papers.	BIA-5428.
Modification of Lease	BIA-5443.
Mineral Prospecting Permits:	
(1) Oil and Gas (Non-exclusive and without option to lease).	BIA-5424.
(2) Mineral (Non-exclusive and non-optional).	BIA-5436.
(3) Mineral (Exclusive and option to lease).	BIA-5437.
Leases	Lease forms may vary between Area and Agency offices.
Sand, gravel, pumice and building stone permits:	
(1) Short-term (6-months)	BIA-5434.
(2) Long-term	BIA-5433.

Subpart C—General

Sec. 211.30 Scope.

There were no comments on this section.

Sec. 211.31 Authority and responsibility of the Authorized Officer.

This section has been rewritten for clarity, and the title changed to—Authority and responsibility of the Bureau of Land Management.

Sec. 211.32 Authority and responsibility of the Minerals Management

Service (MMS). (Refer to 48 FR 134, Page 31982.)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents, while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Sec. 211.33 Definitions.

The definitions in this section have been consolidated in § 211.3. A new section defining the responsibilities of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE) has been added.

Sec. 211.34 Approval of amendments.

A number of commentators expressed concern that in drafting paragraph (a), the BIA intends that the criteria for approval of an amendment, modification or supplement to an agreement entered into pursuant to the 1982 Act, are also applicable to leases under the 1938 Act. The BIA recognizes that, as proposed, paragraph (a) seemed to imply that amendments, modifications, or supplements must meet the 1982 Act criteria, inasmuch as it stated that the contract, as modified, must meet "* * * the criteria for approval set forth in § 211.6 or § 211.21." The purpose of this provision is to assure that amendments to contracts, whether leases entered into pursuant to the 1938 Act, or contracts (including leases) entered into under the 1982 Act, do not alter an approved contract to such a degree that it would no longer be in the Indian owner's best interests. This is what is meant by the references to "the criteria for approval." The provision has been amended to make it clear that 1982 Act contracts shall be reviewed under the criteria in § 211.6 and competitive leases are to be reviewed under the criteria in § 211.21.

The same objection was voiced with respect to paragraph (b), which the commentators felt could require substantial re-formation of a contract previously entered into, since it would subject such contracts to the requirements of § 211.6. The commentators overlooked the fact that section 8 of the 1982 Act provides that approval of mineral agreements pending before the Secretary, which were submitted prior to the effective date of the Act, shall not be delayed on the grounds that rules and regulations have not been promulgated. There were a number of mineral agreements pending on the date of enactment, which subsequently have been approved. Consequently, the reference to "criteria set forth in § 211.6" was intended to apply to these agreements. However, a reference was erroneously made to the entire "lease" meeting the criteria of § 211.6. This reference has been corrected to insert "contract" in place of "lease." The requirement that the amendment of the contract meet the criteria for approval in § 211.21 applies to amendments to 1938 Act leases.

Several commentators objected to the requirement that the exercise of options to lease Indian lands be approved by the Secretary pursuant to § 211.21, which governs the competitive bidding process. Upon further consideration, the BIA has determined that enforcement of this rule might infringe upon vested legal rights, and has deleted this requirement. However, it should be noted that the regulations require that in order to perfect a preference right to a lease in a prospecting permit, the permit must comply with all the laws and regulations applicable to mineral leases.

Sec. 211.35 Removal of restrictions.

No changes were made to this section.

Sec. 211.36 Geological and geophysical permits.

A number of commentators objected to paragraph (a)(2) which would prohibit provisions granting an option or preference right to a lease or other development contract in exploration permits. They point out that the current rules in § 211.27(a) allow such preference rights if they are specifically granted in the permit. They also felt a strict prohibition against preference rights in such permits would not be in the Indian mineral owners' best interests since it might deter companies from conducting exploration operations on Indian lands. The BIA agrees and has revised this paragraph to authorize Indian mineral agreements to specify preference rights in a prospecting permit when explicitly provided for in writing and with the approval of the Secretary and Indian mineral owner.

After considering the many objections to the proposed procedures for settlement of damages with surface owners, set forth in paragraphs (a)(3) (i) through (iv), the BIA has concluded that these provisions, which were taken from oil and gas regulations governing operations on the Osage Reservation in Oklahoma, should not be included in the regulations because the circumstances which prevail on lands within the Osage Reservation are unique to that reservation and may not apply nationally. Consequently, three proposed procedures have been deleted.

The requirement in paragraph (a)(4), that a copy of all data collected by a permittee shall be forwarded to the Secretary and the Indian mineral owner, drew a negative reaction from industry commentators. The comments ranged from the suggestion that such data should not be forwarded to the Secretary or the Indian mineral owner until after the bidding process is completed, to a suggestion that data should never be forwarded to the Indian owner unless provided for in the permit. On the other hand, one Indian tribe suggested that the provision was inadequate because it did not specify that the permittee's interpretations of the raw data, as well as the data itself, should be forwarded to the Indian mineral owner.

The BIA appreciates industry concerns that the confidentiality of data which a permittee has collected should be protected to ensure her/his investment in the collection of such data. However, the BIA believes that the Indian owners of the mineral to be developed are entitled to have access to data which is essential in order for them to know the nature, extent and value of the mineral resource. Consequently, the suggestion that the regulations provide that only the Secretary is to receive copies of data resulting from permit operations is not acceptable. On the other hand, the BIA agrees with one commentator that requiring that a copy of the data must be forwarded to the Indian owner could have undesirable effects in that it could discourage companies from conducting exploration on Indian lands if the confidentiality of the data is compromised. Also, numerous people would receive copies of data for which they have no practical use. Accordingly, the BIA has concluded that this provision should be modified to require that copies of data be made available to the Indian mineral owner if the permit so requires. The intention is that the Indian owners and permittees negotiate as to what data shall be made available, and what procedures will be followed with respect to protecting its confidentiality.

Paragraph (a)(5), as proposed, required the permittee to obtain rights of ingress and egress from the surface owner. This provision would apply in situations where the Indian mineral owner may or may not be the surface owner. One industry commentator noted that her/his company had experienced difficulties in securing rights of ingress and egress because of the great number and diversity of surface ownerships—especially where there is a mixture of reservation and allotted lands. The commentator proposed alternative language which differentiates between instances where the Indian mineral owner is or is not the surface owner. Under this alternative, which the BIA has adopted, where the Indian mineral owner is the surface owner, such owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessees, etc., on her/his land, to allow the geological permittee to enter the land and conduct operations. Where the Indian mineral owner is not the surface owner, such owner shall assist the geological permittee to obtain any additional permits to the best of her/his ability.

Paragraph (b) provides that no permit is required to conduct geophysical or geological operations "on Indian lands" included in a contract entered into pursuant to Part 211, unless the contract *per se* requires a permit. The public should be aware that this provision does not apply in situations where the United States is the owner of the surface of the lands involved. In all such situations, a permit to conduct exploratory operations must be obtained from the Authorized Officer.

Sec. 211.37 Economic assessments.

This section contains the elements to be included in an economic assessment of a proposed minerals agreement. As proposed, these elements were to be mandatory "findings." One commentator stated that it was unclear whether or not each of the elements or criteria must be determined affirmatively in order for an agreement to be approved, or whether the Secretary must simply state whether or not each exists and then make a balanced overall assessment. The commentator urged the latter because, while an agreement might fail to meet one or more of the criteria, taken in its entirety, the agreement could be very advantageous to the Indian mineral owner.

One industry commentator urged that this section be deleted entirely because the 1982 Act does not anticipate anything as specific or detailed as the requirements of this section. He pointed out that the Act merely requires the Secretary to "consider the potential economic return to the tribe." The BIA's reaction to this criticism is the same as the reaction to similar criticism of § 211.6, i.e., the proper approach to a proposed agreement should be to determine whether each element is present, and then make an overall determination whether the agreement is in the Indian owner's best interest. Accordingly, § 211.37(a) has been revised to provide that an economic assessment shall take into consideration the elements as set forth, and the requirement of written findings on each element has been deleted.

Several commentators objected to the requirements in § 211.37(d), that, in reviewing a negotiated contract, a finding must be made as to whether or not the negotiated contract "clearly" provides the Indian mineral owner with a "greater" share of the return on the production of her/his mineral than would be obtained through competitive bidding. They contend that this provision is unreasonable and impractical, and that such a determination cannot be made. The BIA agrees with this assessment. Accordingly, in line with the changes in paragraph (a) discussed above, "is likely to" is substituted for "clearly," and "equal to" is added to "greater than" in paragraph (d).

Section 211.37(a)(6) has been deleted inasmuch as this provision is not appropriate to mining operations involving hard rock minerals.

Paragraph (b), which defined the term "geological and geophysical permit" has been deleted. This definition is now defined in § 211.3(o).

Sec. 211.38 Environmental assessments.

Minor editorial corrections and additions have been made to paragraph (a).

Industry commentators recommended that paragraph (b) be deleted on the grounds that it is superfluous, since the type of cultural/historical study required under the 1982 Act is directly tied to NEPA, which is referenced in paragraph (a). The BIA does not agree. Paragraph (b) implements the requirement in section 4(b) of the 1982 Act which provides that in approving or disapproving mineral agreements, the Secretary shall consider, among other things, the potential social and cultural effects of the agreement, as well as the potential effects on the environment. Acts of Congress such as the National Historic Preservation Act, the Archeological and Historic Preservation Act, and the Archeological Resources Protection Act of 1979, require all federal agencies to take affirmative steps to preserve and protect districts, sites, buildings, structures, and objects significant in American history, architecture, archeology and culture. The requirements of the 1982 Act are thus in addition to those in earlier Acts, and are not a substitute for them. Consequently, paragraph (b) has been retained. Some editorial changes have been made.

Sec. 211.39 Persons signing in a representative capacity.

One commentator asked whether paragraph (b) is intended to require that each time a corporation proposes to acquire an interest in Indian minerals, it must file a statement containing all of the information required by the regulations; and commented that if this was the intent, the regulation would impose an unnecessary burden on industry. The BIA agrees that unless there is a significant change in the corporate structure, a corporation should not be required to file the same information repeatedly. Accordingly, paragraph (a) has been revised to require that corporations have on file a statement which complies with the regulation at the agency in which the Indian lands are located.

Industry commentators recommended that paragraph (c) be deleted on the grounds that it is arbitrary and capricious, since it would authorize the Secretary to require meaningless information to be submitted and subject a lessee to disapproval or cancellation for failure to furnish it. Furthermore, they add, the Secretary has other enforcement mechanisms short of something as harsh as cancellation.

The BIA has concluded that the information requirements of this section are repetitious in that both paragraphs (b)(3) and (c) would have authorized the Secretary to require additional information as necessary. Accordingly, paragraph (b)(3) has been deleted. In addition, it is concluded that the last sentence of paragraph (c), which states that failure to furnish requested information will be grounds for cancellation or disapproval of a document, is unnecessary since the Secretary has the discretionary authority to decline to approve an instrument for failure of an applicant to comply with the Department's rules.

Sec. 211.40 Bonds.

Commentators felt that this section should identify the purpose of the bonds. Additional language has been added to paragraph (b) in response to this concern.

Commentators asked who would be the "approving official" referred to paragraph (b). The answer is either the Agency Superintendent or an Area Director.

Two industry commentators recommended that this section be deleted in its entirety. They contended that the requirement and manner of bonding should be left as a matter of negotiation between the parties with a review by the Secretary of the mechanism employed to insure that the interests of the Indian mineral owner are protected. They also suggested that a provision for self-bonding should be added.

The BIA recognizes that a contract or prospecting permit entered into through negotiations under the 1982 Act could contain bonding provisions agreed to by the parties. Similarly, the parties to the contract could agree to self-bonding in lieu of the bonding requirements of this section, provided the Secretary determines that the proposed bonding is in the Indian owner's best interest. However, this section also applies to leases entered into pursuant to the 1909 and the 1938 Acts, and the BIA believes that the rules must provide for bonding covering such leases. With respect to self-bonding, the BIA does not have sufficient information on which to base a determination that such bonding will adequately protect Indian mineral interests or to develop criteria for determining when such bonding is appropriate. Thus, self-bonding is not included in the regulations at the present time.

Sec. 211.41 Manner of payments.

No changes were made to this section. One commentator suggested that the phrase "or as provided by tribal constitution or by-laws" be added at the end. This suggested change was not accepted because, as set forth in § 211.1(e), discussed *ante*, a tribe organized pursuant to the Indian Reorganization Act of 1934 (and other acts) may adopt rules which supersede any of the regulations in this part, provided such rules are not in violation of Federal laws.

Sec. 211.42 Permission to start operations. (New)

This is a new section and the section designations following it have been redesignated accordingly.

This section is a revision of existing 25 CFR 211.20. Paragraph (a) has been revised to provide that no operations on contracted areas may begin before the effective date of the mineral contract, and to make it clear that the effective date of the contract is the date it is officially approved by the Secretary, or a designated representative. This provision should be construed as prohibiting any surface disturbance on the land prior to official approval of a contract.

Paragraph (b) of the existing rule has been amended to provide that approval of applications for permission to start operations is to be secured from the Authorized Officer in the Bureau of Land Management since that agency now performs this function.

Sec. 211.43 Recordkeeping. (Old § 211.42)

No changes were made to paragraph (a).

Industry commentators strenuously objected to the requirement in paragraph (b) that all records, including records regarding the financial structure of the prospector or operator, be made available for examination and reproduction by the Secretary, the Authorized Officer and tribal mineral owner. They contend that as long as the regulations provide that the Secretary may require an audit, there is no need to reproduce the records, and that such a requirement would greatly increase the risk that proprietary, competitive and financial information would be leaked to third parties. They argue that disclosure of such information would adversely affect an operator's contracts and competitive edge.

The BIA has concluded that the arguments against making all records available for reproduction are persuasive. Accordingly, paragraph (b) has been modified to provide that all records shall be made available to the Secretary upon request and has dropped the requirement that they be reproduced. Under this rule, an Indian mineral owner may request the Secretary to conduct an audit or cause an independent audit to be made. The audit will then be made available to the Indian mineral owner.

Sec. 211.44 Mining contracts—individually-owned Indian lands. (Old § 211.43)

Industry commentators recommended deletion of paragraph (b) requiring allotted lands of a deceased allottee to be offered for sale by competitive bidding. One commentator argued that although the 1909 Act, which requires competitive sales whenever heirs and devisees cannot be located or have not been determined, was not repealed, nevertheless an agreement approved pursuant to the 1982 Act should not be subject to the earlier statute's requirement for competitive bidding. We agree, and have changed the regulations accordingly.

Paragraph (c) has been changed to improve technical accuracy.

As proposed, paragraph (d) of this section provided that the Secretary may approve a contract, where less than 100 percent of the undivided mineral interest is to be committed to the contract, if 51 percent or more of the mineral interest is committed. Upon further consideration, the BIA has concluded that a 51 percent margin is too small. Accordingly, the margin has been raised to 66⅔ percent.

Sec. 211.45 Assignments; overriding royalties and operating agreements. (Old § 211.44)

Industry comments on paragraph (a) of this section strongly urged that it be modified to delete language to the effect that an assignment or sublease of an interest in a contract is not effective without the approval of the Indian owner. They contend that the existence of multiple owners of undivided interests in allotted lands should preclude this requirement on practical basis. One commentator expressed a concern that such open-ended approval authority on the part of Indian mineral owners could be abused and could be utilized to seek additional consideration as a condition to approving an assignment. Another commentator objected to the requirement that assignments be subject to the criteria of § 211.6 on the grounds that there is no justification for requiring a complex review process for an assignment, because the assignment will not affect the rights and obligations of the operator/lessee or the Indian mineral owner, or alter the economic or environmental aspects of the project.

The BIA has concluded that the requirement of Secretarial approval of all assignments or subleases will provide an adequate safeguard against interests in contracts being assigned or sublet to unqualified persons or companies without the necessity of requiring approval of the Indian mineral owners in every instance. At the same time, the BIA does not desire to preclude Indian mineral owners and lessees from including a requirement for lessor consent in the contract, should the parties agree to do so. Accordingly, this section has been revised to delete the mandatory requirement for approval by Indian owners. The BIA also agrees, as some commentators argued, that the review process set forth in § 211.6 is unnecessarily burdensome with respect to assignments. In addition, the requirement would be inconsistent with the position the BIA has taken that the requirements of the 1982 Act will not apply to contracts entered into pursuant to the 1909 and 1938 Acts. Consequently, paragraph (a) has been revised to delete this requirement.

The BIA generally does not require lessees to attain approval of farmout or overriding royalty agreements. However, such agreements should be filed with the appropriate BIA agency office. Should such an agreement in reality be an assignment of interests changing the terms of the lease or minerals agreement, the burden is on the lessee to acquire the requisite consent of the mineral owners and the subsequent approval of the Secretary.

The BIA has concluded that paragraph (b) should be amended to require that a copy of any agreement creating overriding royalties or payments out of production be filed with the Secretary except in instances where the agreement is incorporated in an assignment which is required to be approved under paragraph (a), as provided in existing regulations in 25 CFR 211.26(d).

The BIA also has concluded that assignments of operating rights need not and will not be approved by the Secretary. However, in order to keep the Secretary apprised of the identity of the operator, the rule requires that such designations be filed with the Secretary.

Sec. 211.46 Legal review. (Old)

One commentator suggested that this section should be clarified to assure that submission of a proposed contract to a Field or Regional Solicitor's office for legal review will not result in any extension of the time currently established in the regulations for final Secretarial approval or disapproval. Inasmuch as the statutory time limits for review and approval or disapproval of a proposed minerals agreement are established by the 1982 Act, it is clear that the Department lacks any authority to extend the time frame through regulations, and no such extension should be implied by this section. The policy of the Department is that reviews of proposed mineral agreements for legal sufficiency will be bound by the statutory time limits in the 1982 Act. Upon reconsideration, the BIA has concluded that this section is unnecessary inasmuch as existing internal BIA guidelines will require legal review of mineral contracts. Therefore, this section is removed.

Sec. 211.46 Termination and Cancellation; Enforcement of orders. (New)

Industry commentators recommend that this section be deleted in its entirety. They contend, first, that the handling of contract defaults should be matters for negotiation by the parties to the minerals agreement; that the parties should be free to utilize specified arbitration or judicial procedures as a means of resolving disputes, and that the mechanisms to accomplish this can be provided for in the agreement. One industry commentator suggested that the regulations must be rewritten (a) to limit the Secretary's enforcement powers to violations of Federal laws, regulations, and approved mining plans, and (b) to limit the Secretary's trustee duty to assisting Indian mineral owners, when necessary, to enforce their contract rights and remedies in the manner provided for in a mineral agreement. Finally, industry commentators assert that there is no statutory authority for the regulations in § 211.45 and § 211.47.

The answer to the first contention is that section 4(b) of the 1982 Act specifically directs the Secretary, in approving and disapproving a proposed agreement, to consider, among other things,"* * * provisions for resolving disputes that may arise between the parties to the agreement."

Presumably, such provisions could include a proposed scheme for the inspection of operations and the resolution of disputes, and if the Secretary determines that the contract proposal would adequately protect the Indian mineral owners and did not violate applicable laws, such a scheme could be approved. Under those circumstances, provisions for enforcement and arbitration of disputes in the minerals agreement would supersede the BIA's regulations. However, the BIA cannot agree that §§ 221.45 and 221.47 should be deleted from the regulations for a number of reasons. These sections apply to operations on leases under the 1938 Act and the 1909 Act, as well as to mineral agreement under the 1982 Act. Deletion of these sections would leave the Secretary without any regulatory procedure for enforcement of the terms of such leases. In addition, deletion of these provisions would mean that each time a proposed agreement is presented to the Secretary which either contained no provisions of enforcement or contained unacceptable provisions, approval of the agreement would have to be withheld until acceptable provisions were agreed to by the parties.

In regard to the statutory authority for the regulations, the BIA believes that there are several sources of such authority. For example, section 4(e) of the 1982 Act states that whereas the United States shall not be liable for losses sustained by a tribe or individual Indian under an approved minerals agreement, "* * * the Secretary shall continue to have a trust obligation to ensure that the rights of a tribe or individual Indian are protected in the event of a violation of the terms of any Minerals Agreement by any other party to such agreement." Section 8 of 1982 Act requires the Secretary to promulgate rules and regulations "to facilitate implementation of the Act." Similar provisions authorizing the Secretary to promulgate rules and regulations are found in the 1938 Act (25 U.S.C. 396d) and the 1909 Act (25 U.S.C. 396).

The existing rules of the BIA contain procedures for the enforcement of rules and regulations, orders of supervisory personnel, or the terms and conditions of contracts to conduct mining operations on Indian lands. The regulatory scheme set forth in this section is intended to strengthen these procedures.

In response to public comment, this section has been revised extensively to correct numerous objections and to include suggestions for improvement. The major change from the proposed regulations is the deletion of the opportunity for a hearing before the Superintendent. The BIA believes the 25 CFR Part 2 appeal procedures, now being revised, are adequate to safeguard the interests of affected parties without the delay that could occur by adding an additional 30-day hearing process. All parties will still have the opportunity to appeal and argue their position in writing under the Part 2 procedures. The Bureau also believes that immediately effective cessation orders are appropriate where there is an immediate and serious threat of damage to the environment or resources, and has thus retained this provision.

Sec. 211.47 Suspension of Operations; Remedial Operations.

(This is a new section which has been added for the purpose of separating the provisions for suspension of operations from other provisions contained in § 211.22 Duration of Leases.)

A number of commentators suggested that the provision of § 211.22 Duration of Leases, paragraph (c), limiting the period of suspension of operations to 60 days, was unsatisfactory. They suggested that this provision is unrealistic, since other situations, such as labor strikes, inability of a customer to receive the mineral, delays in obtaining permits, as well as economic considerations, could justify a suspension of operations for more than 60 days. Their suggestion was that this paragraph should be deleted altogether, although one industry commentator suggested the maximum be increased to 180 days. On the other hand, a tribal attorney suggested that, based upon his experience, the 60-day limit is workable and commendable. He suggested that while an operator should not be penalized when diligently resuming work to correct damage from natural or accidental disasters, the operator should not be entitled to hold the leasehold indefinitely simply because it is seriously inconvenient to obtain production in paying quantities.

Industry commentators also asked that § 211.22 paragraph (d), providing for a minimum rental, be deleted for the reason that it imposes an economic burden on a lessee. The BIA does not accept this argument. A suspension of mining operations during the extended term of the lease means that the Indian mineral owners receive no royalty during the period of the suspension. The loss of the income provided by royalties clearly constitutes an economic burden on the Indian owner for which she/he should be compensated.

After considering these comments, it is obvious that suspensions of operations fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of operations for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land

Management in 43 CFR 3473.4, 3483.3, and 3503.3-2 as applicable. In cases where a suspension of operating and producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of operations.

It has also been decided that the requirement for permission to suspend operating and producing requirements in the primary term of a contract, as proposed in § 211.22 paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Sec. 211.47 Penalties. (Redesignated § 211.48)

A number of commentators suggested that this section be revised to provide that, to the extent the Indian mineral owner and the operator have created private rights and liabilities, the $1,000 per day penalty and the other enforcement provisions of this section are not applicable. The BIA has accepted this proposal and has modified the section accordingly. The basis for this change is that, as proposed, this section would have established a regulatory maximum fine of $1,000 per day. The BIA agrees that the parties should not be constrained by such a limitation if they wish to agree to a penalty in excess of $1,000 per day or to some other penalty provision.

Sec. 211.48 Appeals. (Redesignated § 211.49)

The commentators on this section suggested that the appeal provisions should be modified to provide for an expedited system of appeals, and suggest a procedure whereby an appeal would be made directly from a decision of an Area Director to the Interior Board of Indian Appeals or to the Interior Board of Land Appeals. The comments did not include any arguments in support of this suggestion. However, the BIA has received numerous complaints from a variety of sources that the existing system of appeals is cumbersome. Also, others have complained that the existing rules and regulations in 25 CFR Part 2 neither adequately explain an appellant's rights to appeal nor do they set forth the procedural steps which must be followed to perfect the appeal in an easily understood manner. BIA is in the process of revising the Part 2 regulations to address these and other concerns.

Sec. 211.49 Fees. (Redesignated § 211.50)

No comments were received on this section and no changes have been made.

Sec. 211.50 No mineral agreements made with government employees. (Redesignated § 211.51)

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is barred by Federal law. See 18 U.S.C. 437.

B. Part 225—Oil and Gas and Geothermal Contracts—General Discussion

As mentioned *ante* Part 225 has been revised to include specific references to geothermal operations. The BIA has decided that contracts for geothermal development shall be processed as mineral agreements under the requirements of Subpart A, for the reason that this type of contract does not lend itself to processing under standard forms used by the BIA for competitive oil and gas leasing. Accordingly, Subparts A and C have been revised to add appropriate references to geothermal.

Sec. 225.1 Purpose and Scope.

Minor changes were made to paragraph (b) of this section and a new paragraph (e) was added to make the section conform to a similar addition in § 211.1.

A new § 225.3, *Definitions*, has been added to incorporate all of the definitions in this part in one section, and §§ 225.21 and 225.43 have been eliminated. A new definition of the term "geothermal resources" has been added and definitions of the terms "minerals agreement," "operator," and "geological and geophysical permit" have been revised to include the term "geothermal" or "geothermal resources." In addition, the term "Indian mineral owner" has been deleted and a definition of "Indian owner" substitued in lieu thereof. This term is defined to include Indian tribes and individuals who own land or interests in oil and gas or geothermal resources.

Subpart A—Fluid Minerals Agreements

Sec. 225.20 Scope.

The second sentence in this section has been deleted.

Sec. 225.21 Authority to contract.

This section has been revised to conform to § 211.5. Refer to the discussion of comments on § 211.5.

Sec. 225.22 Negotiation procedures.

This section is identical to § 211.6. For a discussion of the comments and the changes made, refer to that section.

Sec. 225.23 Approval of agreements.

This section is identical to § 211.7. Refer to that section for a discussion of the comments.

Subpart B—Procedures for Competitive Oil and Gas Leases.

Sec. 225.30 Scope.

A minor editorial change was made to this section.

Sec. 225.31 Procedures for awarding leases.

For a discussion of the changes made to this section refer to § 211.21.

Sec. 225.32 Duration of leases.

A large number of commentators objected to the proposed definition in paragraph (b) of "paying quantities" which was fundamentally the same as the definition of this term in § 211.22. The basis for the objections was essentially the same, namely, that the definition is unnecessarily complex and includes expenses which should not be considered. The commentators urged that the BIA either revise this provision to eliminate a definition of "paying quantities," or adopt the definition used in federal oil and gas leases on public lands. The BIA has decided to include the definition found in the regulations for federal lands which has been in effect for several years.

The provisions for suspension of operations are addressed at § 225.54.

Sec. 225.33 Rentals; minimum royalty; production royalty on leases.

Some commentators recommended changes in the procedure for determining "value" set forth in paragraph (d). However, because the Secretary has decided that rules and regulations governing how the value of the production of oil and gas on Indian land is to be determined, shall be prepared by the MMS and located in 30 CFR Chapter II, proposed paragraph (d) relating to the methods of determining value of production has been amended. Accordingly, a discussion of the comments on the proposed rule has been omitted.

Most of the comments received on this section were objections to paragraph (e).

Industry commentators were concerned that the lessor's right to take excess gas could impair long-term gas sales contracts entered into by the lessee, and requested that the regulation be amended to prevent such an occurrence. The BIA agrees that this right should be available in the event that the gas taken is in excess of the lessee's requirements for lease operation and contracts. Accordingly, the *proviso* has been modified to require that the Superintendent must determine that the gas is available in sufficient quantities and is not subject to any pre-existing sales contract, or that its disposition is not otherwise provided for in the lease.

Two Indian commentators complained that paragraph (d) relating to excess gas is a change to the existing regulation in 25 CFR 211.13(b), in that it would require payment for the excess gas, while the existing rule requires no payment. The commentators overlook the fact that the old rule limited use of such gas to schools or other tribally-owned buildings, whereas the new rule extends the right to any Indian mineral owner and puts no limitation on how the gas is to be used. The BIA believes these extensions justify the changes imposed by the regulation.

Sec. 225.34 Contracts for subsurface storage of oil and gas.

There were no comments on this section and no changes made.

Sec. 225.36 Forms.

Refer to § 211.23.

Subpart C—General

Sec. 225.40 Scope.

No changes were made to this section.

Sec. 225.41 Authority and responsibility of the authorized officer.

Some editorial changes have been made to more clearly state the responsibilities assigned to the Authorized Officer resulting from Departmental reorganization, and the title changed to Authority and Responsibility of the Bureau of Land Management (BLM).

Sec. 225.42 Authority and responsibility of the Minerals Management Service (MMS)

The BIA has accepted the suggestion of several commentators that the word "inspection" be substituted for "obtaining" in the second sentence of this section. The comments were that this change would more adequately preserve the confidentiality of the documents while permitting their use by MMS to ensure accurate royalty payments. The BIA agrees that this is a reasonable modification and the section has been rewritten.

Sec. 225.43 Definitions. (Old)

As previously noted, the definitions in this section have been designated as a new § 225.3 and the subsequent sections are redesignated.

Sec. 225.43 Approval of amendments to contracts. (New)

Some reference errors were corrected. Refer to § 211.34 for a discussion of the comments on this section.

Sec. 225.44 Geological and geophysical permits.

The changes made to this section follow changes made to § 211.36.

Sec. 225.45 Removal of restrictions.

No substantive changes were made to this section. Refer to § 211.35.

Sec. 225.46 Oil and gas and geothermal contracts on individually-owned Indian lands.

This section parallels § 211.44. Refer to that section for a discussion of substantive comments.

Sec. 225.47 Persons signing in a representative capacity.

Refer to § 211.39.

Sec. 225.48 Economic assessments.

Refer to § 211.37.

Sec. 225.49 Environmental assessments.

Refer to § 211.38.

Sec. 225.50 Bonds.

Refer to § 211.40. The "approving official" referred to in paragraph (b) is the Deputy to the Assistant Secretary—Indian Affairs (Trust and Economic Development), and those persons designated to act for him during his absence (10 BIAM 5.5).

Sec. 225.51 Manner of payments.

Refer to § 211.41.

Sec. 225.53 Assignments and overriding royalties.

Refer also to § 211.45. A number of industry commentators noted that it is unclear from the language of paragraph (a) whether the BIA intends to prohibit the assignment of operating rights, or merely that approval of such assignments by the Secretary is not required. They contend that assignments of operating rights serve an essential purpose in getting wells drilled, and that industry would strongly object to any prohibition of such assignments.

Indian commentators contend that the regulations should provide that the assignment of any interest in Indian oil and gas resources, including an assignment of operating rights, should be deemed invalid unless it has been approved by the Secretary with the consent of the Indian mineral owner.

After considering the issue, the BIA has concluded that designation of operators should be filed with the Secretary, but approval by the Secretary will not be required because there is no transfer of any leasehold interest.

Sec. 225.54 Suspension of Production; Remedial Workover/Shut-In.

This section, which authorized suspension of producing requirements under certain circumstances, has been extensively revised in response to critical comments and added as § 211.47 to the non-oil and gas and geothermal regulations, using principally the same language.

Several Indian commentators objected that paragraph (b) would require the consent of the Indian mineral owners to suspension of producing requirements for economic and marketing reasons only if such consent is specifically required in the contract. They contend that suspensions should never be granted without the consent of the Indian mineral owner, regardless of whether or not a consent provision is included in the contract. They also complained that paragraph (b) appears to provide that any lease, even a lease for a one year primary term, could be extended to ten years on the basis of a shut-in application based upon a lack of adequate marketing facilities or unsatisfactory marketing conditions. This assumption appears to be based upon the commentators' interpretation of the language in paragraph (b) to the effect that "such suspensions shall not exceed beyond the ten-year primary term of tribal leases approved pursuant to the Act of May 11, 1938 * * * or leases on allotted lands approved pursuant to the Act of March 3, 1909 * * *."

Also, a number of Indian commentators objected to a $2.50 per acre shut-in royalty, which they characterized as "inadequate and insignificant." One commentator suggested that the royalty should be no less than $10.00 per acre. Industry commentators either objected to any payment of a shut-in royalty or contend that such royalty should be paid as an alternative to rentals, not in addition to rent. Several commentators noted that a regulatory requirement to pay any specified shut-in royalty could be at variance with provisions that an Indian mineral owner and an operator might agree upon in a mineral agreement. They point out that such a situation would be contrary to the intent of the 1982 Act, which was to grant Indian mineral owners and operators greater flexibility in reaching agreements.

After considering these comments, it is obvious that suspensions of production fall into two distinct categories—remedial and economic. It has been determined that in cases of short-term shut-down of production for remedial workover or repair of mechanical failure purposes, after expiration of the primary term of the contract, the consent of the Indian mineral owner shall not be required unless so stated in the contract, and the request for suspension, if approved by the Secretary, will be pursuant to the procedures of the Bureau of Land Management in 43 CFR 3162.3-2. In cases where a suspension of producing requirements is requested after expiration of the primary term of the contract for economic or marketing reasons, it has been determined that the request or application for suspension shall be accompanied by the written consent of the Indian mineral owner, along with an agreement executed by the parties to the contract which sets forth the terms pertaining to the suspension of production.

It has also been decided that the requirement for permission to suspend producing requirements in the primary term of a contract as proposed in paragraph (b), should be eliminated in light of the many objections raised in the comments. Consequently, this entire section has been rewritten to indicate the procedures to be followed in each of the types of suspensions cited above.

Sec. 225.55 Unitization, communitization and well spacing agreements.

Paragraph (a) has been amended to include the term "cooperative unit plan."

The BIA has concluded that requiring preparation of a written economic report as a part of the review process would impose an unnecessary administrative burden, inasmuch as the interests of the Indian oil and gas owner are considered in detail at the time a proposed contract is presented. Consequently, this requirement has been removed.

The purpose for pooling mineral interests is to promote conservation and efficient development of the resources. However, during the early 1980's, when speculation for oil and gas properties caused bidders to offer extremely high bonuses, many Indian mineral owners put pressure on BIA officials to either not act on, or disapprove, cooperative agreements for the sole purpose of causing the primary terms of leases to expire so the lands could be released and new bonuses received. The Department believes that the review process should be limited to the technical aspects of whether or not the proposed agreement provides for proper operational concerns. Paragraph (7) has been added to reduce the likelihood that officials will consider provisions other than the engineering and technical aspects of the agreement. It provides that approval of the agreement shall be retroactive to the date of submittal to the Department, or the date of first production within the proposed unit, whichever is earlier, should the approval review process of a favorable technical finding extend beyond the primary term of the lease. However, paragraph (5) continues the policy that such agreements be submitted ninety (90) days prior to the earliest expiration date of any Indian contract in the unit.

In response to comments, a new paragraph (8) has been added segregating leases at the time of communitization into participating and non-participating areas, depending on the terms in the agreement. From experience, the BIA does not believe that this will happen often, when surface area is the only item being considered. However, the BIA has, in more recent practice, required that communitization agreements be restricted to the specific strata or formations to be diligently developed, thus not holding the remaining nonproductive formations beyond the primary term of the lease by production from only one or two producing formations. This new provision incorporates that practice into the regulations.

A number of commentators pointed out the requirement in proposed paragraph (d) that an affidavit certifying that all Indian mineral owners "have been given notice" that approval of an agreement is being sought might be impossible to fulfill insofar as allotted Indian lands are concerned. The BIA has concluded this comment is valid and has modified the provision to require that the affidavit certify that reasonable efforts were made to secure the consent of the Indian oil and gas owners who have not given prior consent, by mailing them an invitation to join the unit. The invitation shall be sent to their last known mailing address.

The BIA has concluded that the existing practice of filing proposed unit agreements with the Superintendent should be formalized. Accordingly, this section has been amended. In addition, a new paragraph has been added providing that the Superintendent shall obtain the recommendations of the Authorized Officer for approval or disapproval of a proposed agreement, based upon the engineering and technical aspects of the agreement before taking action on the agreement. This addition also formalizes an existing procedure.

In response to comments, a new paragraph has been added requiring that each well within a cooperative unit must be drilled in conformity with an acceptable well spacing program at a surveyed well location approved by the Authorized Officer. The provision also defines an acceptable program.

Sec. 225.56 Inspection of premises; books and accounts.

See also comments on § 211.43.

One Indian commentator recommended this section be amended to provide that individual Indian mineral owners, tribes, or their representatives shall have the right to request any and all data, and/or make an inspection of the records of the Minerals Management Service or the operator's records, in order to make an evaluation of the correctness of royalty accounting. One industry commentator contends that inspection of the contracted premises, books and accounts is controlled by the Federal Oil and Gas Royalty Management Act of January 12, 1982 (FOGRMA) (96 Stat. 2447; 30 U.S.C. 1701 *et seq.*).

It is the intention of the BIA that Indian mineral owners shall have the right to examine an operator's books and records pertaining to operations involving their mineral interest at any time during regular business hours, and agreement by a proposed operator to honor this right shall be a condition of approval of a contract by the Secretary. In this regard, section 103 of the Federal Oil and Gas Royalty Management Act specifically provides that any reports, records or information required by the Secretary for the purpose of implementing that Act or determining compliance with rules or orders issued pursuant to that Act, shall be made available for inspection and duplication upon request by an Indian tribe conducting and audit investigation.

Sec. 225.57 Termination and cancellation; enforcement of orders.

Refer to § 211.46.

Sec. 225.58 Penalties.

Refer also to § 211.47.

Several commentators contended that this section, as proposed, is inconsistent with civil penalty provisions in section 109 of FOGRMA and urged that the section be revised to conform to that Act. The thrust of their contention appears to be that section 109 sets the standards and procedures for the imposition of penalties involving oil and gas operations on Indian and Federal lands. The BIA believes this is an incorrect interpretation of FOGRMA, inasmuch as section 304 of that Act states unequivocally that the penalties and authorities in the Act are "supplemental to, and not in derogation of any penalties or authorities contained in any other provision of law." The BIA construes this provision to mean that any authority previously granted by Congress under other mineral development Acts is unaffected by the enactment of FOGRMA and that the penalty provisions of that Act supplement, but do not replace, rules and regulations governing penalties promulgated under prior Acts. A new paragraph (d) has been added to make this point clear. Some commentators pointed out that the provision in this section to the effect that violators may be subject to a penalty of "not less than $1,000 per violation per day" is inconsistent with the penalty in § 211.47 of "not more than $1,000 per violation per day" and asked for clarification. It is the BIA's intention to set a maximum penalty of $1,000 per violation per day, and this correction has been made. The BIA agrees with commentators who contend that a minimum penalty of $1,000 per violation per day could be excessive in instances where minor violations were involved, whereas a maximum $1,000 penalty will permit the Secretary to tailor the amount of the penalty to fit the seriousness of the violation.

Another comment was that the section should make it clear that, to the extent the parties create private specific liabilities in the contract itself, the terms of the contract should control the penalties to be imposed. The BIA agrees with this contention and has revised the section to provide that penalty provisions in an oil and gas contract approved by the Secretary, where inconsistent with the penalties provided for in this section, supersede the provisions on this section. It should be noted, however, that this should not be construed to mean that the Secretary will approve a contract which purports to exempt the parties from compliance with any specific penalties provided by Congress, such as FOGRMA.

Sec. 225.59 Appeals.

This section is identical to § 211.48. For a discussion of the comments and the changes made, refer to that section.

Sec. 225.60 Fees.

No changes have been made to this section.

Sec. 225.61 Legal review.

(Old) Refer to § 211.46 (Old).

Sec. 225.61 No oil and gas agreements made with Government employees (New).

This section prohibits employees or agents of the BIA or Indian Health Service (IHS) from entering into, or being a party to, any mineral agreement involving an Indian-owned mineral interest. Such holding is prohibited by federal law. See 18 U.S.C. 437.

Sec. 225.62 Sales contracts, division orders and other division of interest documents.

No changes have been made to this section.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291, Federal Regulation, because it will not result in:

(1) An annual effect on the economy of $100 million or more;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of the United States based enterprises to compete with foreign-based enterprises in domestic or export markets; and will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.).*

This final rulemaking will have equal impact on anyone desiring to engage in prospecting for or developing Indian-owned minerals, including oil and gas and geothermal resources. The changes made by the final rulemaking reduce the regulatory burden imposed on such persons in several instances. The final rulemaking does increase the filing fee which must accompany each permit, lease, sublease or other contract, or an assignment or surrender thereof from $10 to $25. This increase is necessary to partially compensate the United States for its costs of processing those documents, but is not an amount that should discourage or prevent any small business from contracting to engage in mineral development on Indian lands.

The changes made by the final rulemaking are for the purpose of streamlining and updating existing leasing procedures, and clarifying the meaning and intent of those procedures. These changes constitute an administrative action and do not impact on the physical environment. The approval of contracts will require compliance with the provisions of the National Environmental Policy Act of 1969, including public participation in compliance with the regulations of the Council on Environmental Quality. In analyzing the alternatives to the changes in the proposed rulemaking which were made in the final rulemaking, the BIA considered the changes to be of such minor variation and degree that the impacts were deemed equal to or less than the changes made by the proposed rulemaking. The Department of the Interior has determined therefore that there will be no significant impact to the human environment.

The Office of Management and Budget (OMB) has informed the Department of the Interior that the information collections contained in 25 CFR Parts 211 and 225 need not be reviewed by them under the Paperwork Reduction Act, Pub. L. 95-511 (44 U.S.C. 3501 *et seq.)*

This final rule is published in exercise of the authority delegated by the Secretary of the Department of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

List of Subjects

25 CFR Part 211

Indians—lands, Mineral resources, Mines, Exploration.

25 CFR Part 212

Indians—lands, Mineral resources, Mines, Oil and gas exploration, Reporting and recordkeeping requirements.

25 CFR Part 225

Indians—lands, Oil and gas exploration.

1. Part 211 is revised to read as follows:

PART 211—CONTRACTS FOR PROSPECTING AND MINING ON INDIAN LANDS (EXCEPT OIL AND GAS AND GEOTHERMAL)

Subpart B—Procedures for Competitive Leases

Subpart C—General

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g, 476, 477, 509); Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); Sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), Act of July 8, 1940 (54 Stat. 745, 25 U.S.C. 880); Secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 988, 25 U.S.C. 476 and 477); Act of August 11, 1978 (92 Stat. 469, 42 U.S.C. 1996); Sec. 102, Act of January 1, 1970 (83 Stat. 852, 42 Stat. 4332); Act of December 22, 1982 (96 Stat. 1938; 25 U.S.C. 2101 thru 2108).

§ 211.1 Purpose and scope.

(a) The regulations in this part govern contracts for prospecting and mining of Indian-owned minerals, other than oil and gas and geothermal. Subpart A—Minerals Agreements establishes the procedures for the approval of minerals agreements entered into pursuant to the Indian Mineral Development Act of 1982 (96 Stat. 1938; 25 U.S.C. 2101 through 2108). Subpart B—Procedures for Competitive Leases contains regulations governing procedures for the issuance of competitive mining leases on tribal and allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to the issuance of contracts for prospecting and mining under both Subparts A and B. These regulations are intended to ensure that Indian owners desiring to have their minerals developed receive at least fair and reasonable remuneration for the disposition of their mineral resources; to ensure that any adverse environmental and cultural impacts resulting from such development are minimized, and to permit Indian mineral owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in the development of their mineral resources.

(b) The regulations in this part do not affect leasing and mining governed by the regulations in 25 CFR Parts 213, 214, 215, and 30 CFR Chapter VII for coal operations.

(c) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, the royalty rate, rental, or acreage unless agreed to be all parties to the contract.

(d) Exploration and mining operations for minerals (except coal) on Indian lands are subject to the regulations in 43 CFR Group 3500 and 25 CFR 216 Subpart A. Exploration and mining operations for coal on Indian lands are subject to the regulations in 25 CFR Part 216 Subparts A and B, and applicable regulations in 43 CFR Group 3400 and 30 CFR Part 750.

(e) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 987; 25 U.S.C. 461 through 479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501 through 509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 211.2 Information collection.

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 211 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*).

§ 211.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Act" means the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

(b) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered into pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), or other agreement, or amendment, supplement, or other modification of such agreement, providing for the exploration, or extraction, processing, or other development of minerals, or providing for the sale or disposition of the production or products of such mineral resources.

(c) "Secretary" means the Secretary of the Interior or an authorized representative.

(d) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(e) "Superintendent" means a Bureau of Indian Affairs Superintendent or the authorized Bureau representative having immediate jurisdiction over the minerals covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(f) "Bureau" means the Bureau of Indian Affairs.

(g) "Indian mineral owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in land, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in land, the title to which is held in trust by the United States or is subject to restriction against alienation imposed by the United States.

(h) "Minerals" includes both metalliferous and nonmetalliferous minerals, except oil and gas and geothermal, and includes but is not limited to, sand, gravel, pumice, cinders, granite, building stone, limestone, clay, silt, or any energy or other non-energy mineral.

(i) "Mining" means the science, technique, and business of mineral development, including opencast, underground work, and in situ leaching, directed to severance and treatment of minerals; however, when sand, gravel, pumice, cinders, granite, building stone, limestone, clay or silt is the subject mineral, an enterprise is considered "mining" only if the sale and removal of such mineral exceeds 5,000 cubic yards in any given year.

(j) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described.

(k) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(l) "Director" means the Director, Office of Surface Mining Reclamation and Enforcement; or the Director's representative.

(m) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into a minerals agreement to mine for Indian-owned minerals.

(n) "Prospector" means a person, proprietorship, partnership, corporation, or other business association which has made application for, is negotiating with an Indian mineral owner with respect to, or has entered into, a mineral agreement to prospect or explore for Indian-owned minerals.

(o) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group, which owns land.

(p) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of minerals on the lands.

Subpart A—Minerals Agreements

§ 211.4 Scope.

The regulations in this subpart govern the procedures for obtaining approval of minerals agreement for the exploration, development and sale of minerals (other than oil and gas or geothermal) on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

§ 211.5 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement or any amendment, supplement or other modification or such agreement.

(b) Any individual Indian mineral owner owning a beneficial or restricted interest in mineral resources may include such resources in a tribal minerals agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 211.6 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance, and information during the negotiation process and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A force majeure provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of the agreement;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted; and

(16) Provisions clearly describing future abandonment, post mining land use, reclamation and restoration activities.

(c) In order to avoid delays in obtaining approval, the tribe may confer with the Secretary prior to formally executing the agreement and seek advice as to whether the agreement appears to meet the requirements of § 211.7, or whether modifications, additions, or corrections shall be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into an agreement, shall be forwarded to the Secretary for approval.

§ 211.7 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within one hundred and eighty (180) days after submission, or sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332 (2)(C)] or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement and shall consider, among other things, the potential economic return to the tribe; the potential environmental, social and cultural effects on the tribe; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 211.38 and an economic assessment as described in § 211.37, if needed. The Secretary may include in the written findings, recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 211.38) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value, or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

Privileged Proprietary Information of the [Name of tribe or Indian].

(d) A minerals agreement shall be approved by the Secretary if it is determined in the written findings that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration to the Indian mineral owner:

(2) The minerals agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweight its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of a paragraph (d)(1) of this section shall be determined by the Secretary based on information submitted by the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available

(g) If any representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, that person shall prepare a written statement of the reasons why the agreement should not be approved an forward this statement—together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents—to the Assistant Secretary—Indian Affairs for decision, with a copy to the affected Indian owner

(h) The Assistant Secretary—Indian Affairs shall review any agreement received containing a recommendation that it be disapproved, and make the final decision for the Department.

Subpart B—Procedures for Competitive Leases

The regulations in this Subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into a mining lease under the Act of May 11, 1938 (25 U.S.C. 396a–g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs the leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 211.21 Procedures for awarding leases.

(a) Competitive mining leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the tribal mineral owner to accept the highest bid, the secretary may readvertise the lease for sale, subject to the consent of the tribal mineral owner, or the lease may be let through private negotiations in accordance with Subpart A of this part.

(b) Indian mineral owners may request the Secretary to prepare, advertise, negotiate, and/or award mining leases on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. (If requested by a potential operator interested in acquiring rights to Indian-owned minerals, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives open to her/him, and that the owner may decline to permit any prospecting, mining, exploration or production.

(c) When the Secretary exercises authority to enter into contracts on behalf of individual Indian mineral owners, or when by the Indian mineral owners under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer leases to the highest responsible qualified bidder subject to the following procedures, unless it is determined, in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description will be mailed to each person listed on the appropriate agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check or postal money order, or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which shall be returned if that bid is unsuccessful;

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing shall result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian mineral owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease to any bidder until the consent of the Indian mineral owner has been obtained.

§ 211.22 Duration of leases.

(a) No competitive mining lease with an Indian mineral owner shall exceed a primary term of ten (10) years and shall continue as long thereafter as minerals are produced in paying quantities. For the purpose of this provision, the term of a mining lease entered into by means of the exercise of an option shall be measured from the effective date of Secretarial approval of the lease. All provisions in leases governing their duration shall be measured from the date of the approval, unless otherwise provided in the lease.

§ 211.23 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive mineral leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the lands.

Subpart C—General

§ 211.30 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian minerals entered into pursuant to this part.

§ 211.31 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations, and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are contained in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration and in the Code of Federal Regulations.

§ 211.32 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service and in the Code of Federal Regulations.

§ 211.33 Authority and responsibility of the Director, Office of Surface Mining Reclamation and Enforcement (OSMRE).

The OSMRE is the regulatory authority for surface coal mining and reclamation operations on Indian lands pursuant to the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 7201 *et seq.*). These responsibilities are found in 30 CFR, Chapter VII.

§ 211.34 Approval of amendments.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part must be approved by the Secretary. The Secretary may approve an amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 211.6 or the competitive lease meets the criteria for approval in § 211.21.

(b) An amendment to or modifications of a contract for the prospecting for or mining of Indian-owned minerals, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire contract meets the criteria set forth in § 211.6 or § 211.21 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification and an environmetal and cultural assessment pursuant to § 211.38 of this part.

§ 211.35 Removal of restrictions.

(a) Notwithstanding the provisions of any mining contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter all payments required to be made under the contract shall be made directly to the Indian mineral owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such time as the holder of the contract and the unrestricted minerals owner shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the mineral resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue to be subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement which provides that payments to the mineral owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of operations, completion of operations, and production, as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian mineral owner at the time and in the manner specified by the regulations in this part.

§ 211.36 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian land which are not included in a contract entered into pursuant to this part may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration of the permit, and the consideration to be paid the Indian owner;

(2)l The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production or removal of minerals unless specifically so stated in the permit;

(3) The permittee or an authorized representative shall pay for all damages to growing crops, or improvements on the lands, and all other surface damage resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian mineral owner when so provided for in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed, the Secretary may release the information upon requests.

(5) In instances where the Indian mineral owner is also the surface land owner, the Indian mineral owner will obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allotee on her/his land needed for the geological permittee to enter onto the

land to conduct exploratory operations. In instances where the Indian mineral owner is not the surface owner, the Indian mineral owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or right of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit; or

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impracticable to obtain their consent and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in a contract entered into pursuant to this part will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of a permit.

§ 211.37 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the contract that prospecting and mining operations will be conducted with appropriate diligence;

(b) Whether water in the amount needed for purposes of operations under the contract is available;

(c) Whether production royalties or other form of return on the minerals or other valuable resources removed from the leased premises is adequate; and

(d) When a method of contracting other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian mineral owner with a share of the return on the production of her/his mineral equal to what she/he might otherwise obtain through competitive bidding where such a comparison can readily be made.

§ 211.38 Environmental assessments.

(a) An environmental assessment shall be prepared by the Secretary in accordance with regulations promulgated by the Council on Environmental Quality, 40 CFR 1508.9, 30 BIAM Supplement 1, and 516 DM 1–7. When it is determined prior to the preparation of the assessment that a complete environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian mineral owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed mineral agreement.

(b) In order to make a determination of the effect of a contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, and the American Indian Religious Freedom Act of August 8, 1978 (Pub. L. 95–341), the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and mining activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the mineral development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property is preserved.

§ 211.39 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, minerals agreements, leases, or assignments, bonds, or other instruments required by these regulations constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned minerals shall have on file with the Superintendent a statement showing:

(1) The State(s) is which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, minerals agreement, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and her/his trust responsibility to the Indian mineral owner.

§ 211.40 Bonds.

(a) The Secretary shall require a prospector or operator to furnish a surety bond in such amount as is deemed appropriate.

(b) Before beginning mining operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving officer to assure compliance with the terms of the contract.

(c) Bonding shall be by corporate surety bonds.

(d) The Secretary reserves the discretionary right to require a change in the amount of bonds. The bonds shall be in an amount at least sufficient to satisfy the reclamation requirements established pursuant to an approved exploration or mining plan, or an approved partial or supplemental plan.

(e) In lieu of the bonds required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

§ 211.41 Manner of payments.

Unless otherwise provided for in an approved contract, all payments shall be made to the Secretary or such other party as may be designated and shall be made at such time as provided for in the contract or by regulation.

§ 211.42 Permission to start operations.

(a) No exploration or mining operations are permitted on any contract premises before the effective date of the contract. The effective date of the contract shall be the date the contract is officially approved by the

Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises in accordance with applicable rules and regulations. After such permission is secured, operations must be conducted in accordnce with all applicable operating regulations promulgated by the Secretary of the Interior. Copies of applicable operating regulations may be secured from either the Authorized Officer or the Superintendent, and no operations should be undertaken without a study of such regulations.

§ 211.43 Recordkeeping.

(a) The prospector or operator shall maintain records of all prospecting and mining operations conducted pursuant to a contract, including information on the type, grade or quality, and weight of all minerals mined, sold, used on the premises, or otherwise disposed of, and all minerals in storage (remaining in inventory), and all information on the sale or disposition of the minerals. Such records shall be kept so that they may be readily inspected.

(b) All maps and records maintained under paragraph (a) of this section, all records regarding the financial structure of the prospector or operator, and any other records which are pertinent or related to operations done under a contract shall be available for examination by the Secretary, upon request. Such records shall at all times be available for the purpose of an independent audit upon the request of the Secretary.

(c) All maps and records maintained under paragraphs (a) and (b) of this section will be furnished MMS in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(d) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 211.44 Mining contracts—individually-owned Indian lands.

(a) The Secretary may execute mining contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, mining contracts involving such interests may be executed by the Secretary, provided that the mineral interest shall have been offered for sale under provisions of § 211.21 of Subpart B.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a minerals contract where less than 100 percent of the undivided mineral interest is committed to the contract, and the Secretary has determined it to be in the best interest of the Indian mineral owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the mineral interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided mineral interest is committed to the contract;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian mineral owners have been contacted and have refused to consent to the contract; and

(4) The operator is required to submit to, and obtain the approval of the Secretary for a plan describing how the operator will account to the non-consenting mineral interest owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting mineral owners with a certified notice that a contract affecting their undivided interest has been approved without their consent, along with a copy of the operator's plan for accounting for their interests.

§ 211.45 Assignments; overriding royalties and operating agreements.

(a) *Assignments.* An assignment or sublease of any interest in a contract entered into pursuant to this part shall not be valid without the approval of the Secretary and the Indian mineral owner, if approval by the Indian owner is required in the contract. The assignee must be qualified to hold such contract and shall furnish a satisfactory bond conditioned on the faithful performance of the terms and conditions thereof. Approval shall not relieve the assignor of obligations under the original contract, unless the Secretary, with the consent of the Indian mineral owner when required, releases the assignor of obligations under said contract. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) *Overriding royalties and operating agreements.* Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof is not required. Such agreements shall be construed as not modifying any of the obligations of the operator with the Indian mineral owner under the contract, the regulations in this part, and Part 216 of this title, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such overriding royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 211.46 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a prospector or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, the requirements of an approved exploration or mining plan, Secretarial orders or the order of the Authorized Officer, and such noncompliance does not threaten immediate and serious damage to the environment, the mine or the deposit being mined, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the prospector or operator by delivery in person or by certified mail to her/him at her/his last known address. Failure of the prospector or operator to take action in accordance with the notice of noncompliance within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Secretary's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the prospector or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the prospector or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a prospector or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the resource or the deposit being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance. The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the prospector or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a prospector or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a prospector or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The prospector or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2; *Provided*, appeals of cessation orders under this part shall not relieve the prospector or operator from the obligation to immediately comply therewith.

§ 211.47 Suspension of operations; remedial operations.

(a) The Secretary may, under such terms and conditions be prescribed, authorize suspension of operating and producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided*, that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3473.4, 3483.3, or 3503.3–2 as applicable. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend operating or producing requirements for economic or marketing reasons on a mining operation capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of operations.

(c) No approval shall be required for a suspension of operations which occurs within the primary term of the contract.

§ 211.48 Penalties.

(a) Violations of the terms and conditions of any contract, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 211.46, may subject a prospector or operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(B) A notice of a proposed penalty shall be served on the prospector or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the prospector or operator of her/his right to either request a hearing within 30 days from receipt of the notice or pay the proposed penalty. Hearings shall be held before the Superintendent whose findings shall be conclusive, unless an appeal is taken pursuant to § 211.49 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance

(c) Payment in full of penalties more than 10 days afer final notice that a penalty has been imposed, shall subject the prospector or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the BIA. In the absence of a specific contract provision prescribing a different rate, the interest rate on late payments and underpayments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest shall be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Prospectors or operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer, the Director, or the MMS official to impose penalties for violations of applicable regulations pursuant to authority granted under 43 CFR Groups 3400 and 3500.

(2) Replacing or superseding any penalty provision in the terms and conditions of a contract approved by the Secretary pursuant to this part.

§ 211.49 Appeals.

(a) Appeals from decisions of the Departmental officers under this part may be taken pursuant to Part 2 of this title.

(b) Cessation orders issued pursuant to § 211.46 of this part shall not be suspended as a result of the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an appeal is pending, and then only upon a written determination by such official that such suspenion will not be detrimental to the Indian mineral owner, or upon submission of a bond deemed adequate by both the Indian mineral owner and the Secretary to indemnify the Indian mineral owner from any resulting loss or damage.

§ 211.50 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of $25. All fees collected pursuant to this section shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 211.51 No mineral agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any mineral agreement, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

PART 212—REMOVED

2. Part 212—Leasing of Allotted Lands for Mining, is hereby removed.

3. Chapter I of Title 25, Code of Federal Regulations is amended by adding a new part numbered Part 225 to read as follows:

PART 225—OIL AND GAS AND GEOTHERMAL CONTRACTS

Sec.

Authority: Sec. 4, Act of May 11, 1938 (52 Stat. 348, 25 U.S.C. 396a–g), Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396); sec. 1, Act of August 9, 1955, as amended (69 Stat. 539, 25 U.S.C. 415), secs. 16 and 17, Act of June 18, 1934 (48 Stat. 987, 25 U.S.C. 476 and 477); sec. 102, Act of January 1, 1970 (83 Stat. 42 U.S.C. 4332); Act of December 22, 1982 (96 Stat. 1938, 25 U.S.C. 2101–2108); Act of August 11, 1978 (92 Stat. 469; 42 U.S.C. 1966); Act of January 12, 1953 (96 Stat. 2447, 30 U.S.C. 1701).

§ 225.1 Purpose and scope.

(a) The regulations in this part govern contracts for the development of Indian-owned oil and gas and geothermal resources. Subpart A—Mineral Agreements, establishes the procedures for the approval of oil and gas or geothermal mineral agreements entered into pursuant to the Indian Mineral Development Act of 1982 (Pub. L. 97-382). Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases contains regulations governing the procedures for the issuance of oil and gas and geothermal leases on tribal or allotted lands pursuant to the Act of May 11, 1938 (52 Stat. 348; 25 U.S.C. 396a–g) and the Act of March 3, 1909, as amended (35 Stat. 783, 25 U.S.C. 396). Subpart C—General contains miscellaneous provisions which apply to contracts for oil and gas or geothermal agreements. These regulations are intended to ensure that Indian owners desiring to have their oil and gas or geothermal resources developed receive at least fair and reasonable remuneration for the disposition of their resources; to ensure at the same time that any adverse environmental or cultural impact on Indians, resulting from such development, is minimized; and to permit Indian oil and gas or geothermal owners to enter into contracts which allow them more responsibility in overseeing and greater flexibility in disposing of their resources.

(b) No regulations which become effective after the approval of any contract shall operate to affect the term of the contract, rate of royalty, rental, or acreage unless agreed to by all parties to the contract.

(c) The regulations in this part do not apply to leasing and development governed by regulations in 25 CFR Parts 213, 226, and 227.

(d) The regulations in this part may be superseded by the provisions of any tribal constitution, bylaw or charter issued pursuant to the Indian Reorganization Act of June 18, 1934 (48 Stat. 984; 25 U.S.C. 461 through 479), the Alaska Act of May 1, 1936 (49 Stat. 1250; 48 U.S.C. 362, 258a), or the Oklahoma Indian Welfare Act of June 26, 1936 (49 Stat. 1967; 25 U.S.C., and Sup., 501 through 509), or by ordinance, resolution or other action authorized under such constitution, bylaw or charter where not inconsistent with Federal law. The regulations in this part, insofar as they are not so superseded, shall apply to leases made by organized tribes if the validity of the lease depends upon the approval of the Secretary of the Interior.

§ 225.2 Information collection

The Office of Management and Budget has informed the Department of the Interior that the Information Collection Requirements contained in section 225 need not be reviewed by them under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq*).

§ 225.3 Definitions.

As used in this part, the following terms have the specified meaning except where otherwise indicated—

(a) "Secretary" means the Secretary of the Interior or an authorized representative.

(b) "Area Director" means the Bureau of Indian Affairs official in charge of an Area Office.

(c) "Superintendent" means the Bureau Agency Superintendent or an authorized representative having immediate jurisdiction over the oil and gas or geothermal resources covered by a contract under this part, except at the Navajo Area Office where it shall mean the Bureau Area Director or an authorized representative.

(d) "Bureau" means the Bureau of Indian Affairs.

(e) "Authorized Officer" means any employee of the Bureau of Land Management authorized by law or by lawful delegation of authority to perform the duties described herein and in 43 CFR Parts 3160 and 3260.

(f) "Minerals Management Service (MMS) Official" means any employee of the Minerals Management Service authorized by law or by lawful delegation of authority to perform the duties described.

(g) "Indian owner" means:

(1) Any individual Indian or Alaska Native who owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to restriction against alienation imposed by the United States;

(2) Any Indian tribe, band, nation, pueblo, community, rancheria, colony, or other group which owns land or interests in oil and gas or geothermal resources, the title to which is held in trust by the United States, or is subject to a restriction against alienation imposed by the United States.

(h) "Oil" means any nongaseous hydrocarbon substance other than those substances leasable as coal, oil shale, or gilsonite (including all vein-type solid hydrocarbons). Oil includes liquefiable hydrocarbon substances such as drip gasoline and other natural condensates recovered or recoverable in a liquid state from produced gas without resorting to a manufacturing process. For royalty rate consideration in special tar sand areas, any hydrocarbon substance with a gas-free viscosity, at original reservoir temperature, greater than 10,000 centipoise is termed tar sand.

(i) "Gas" means any fluid, either combustible or noncombustible, which is extracted from a reservoir and which has neither independent shape nor volume, but tends to expand indefinitely; a substance that exists in a gaseous or rarefield state under standard temperature and pressure conditions.

(j) "Geothermal resources" means:

(1) All products of geothermal processes, embracing indigenous steam, hot water, and hot brines;

(2) Steam and other gases, hot water, and hot brines, resulting from water, gas, or other fluids artificially introduced into geothermal formations;

(3) Heat or other associated energy found in geothermal formations; and

(4) Any byproduct derived therefrom.

(k) "Minerals agreement" means any joint venture, operating, production sharing, service, managerial lease (other than a lease, or amendment thereto, entered pursuant to the Act of May 11, 1938 and the Act of March 3, 1909), contract, or other agreement, or any amendment, supplement or other modification of such agreement, providing for the exploration for, or extraction, processing or other development of oil and gas or geothermal resources, or providing for the sale or disposition of production or products of oil and gas or geothermal resources.

(l) "Operator" means a person, proprietorship, partnership, corporation, or other business entity which has made application for, or is negotiating with an Indian owner with respect to, or has entered into an oil and gas or geothermal contract.

(m) "Surface owner" means any individual who owns land or an Indian tribe, band, nation, pueblo community, rancheria, or colony that owns land.

(n) "Geological and geophysical permit" means a written authorization to conduct onsite surveys to locate potential deposits of oil and gas or geothermal resources on the lands.

Subpart A—Fluid Minerals Agreements

§ 225.20 Scope.

The regulations in this subpart govern the procedures for obtaining approval of mineral agreement for the exploration, development and sale of oil and gas reserves or geothermal resources on Indian lands under the Indian Mineral Development Act of 1982 (Pub. L. 97-382).

§ 225.21 Authority to contract.

(a) Any Indian tribe, subject to the approval of the Secretary and any limitation or provision contained in its constitution or charter, may enter into a minerals agreement with respect to oil and gas or geothermal resources in which such Indian tribe owns a beneficial or restricted interest.

(b) Any individual Indian owning a beneficial or restricted interest in oil and gas or geothermal resources, may include such resources in a tribal mineral agreement subject to the concurrence of the parties and a finding by the Secretary that such participation is in the best interest of the Indian.

§ 225.22 Negotiation procedures.

(a) A tribe or individual Indian mineral owner that wishes to enter into a minerals agreement may ask the Secretary for advice, assistance and information during the negotiation process, and such advice, assistance and information shall be provided to the extent of available resources.

(b) No particular form of agreement is prescribed. In preparing the agreement, consideration should be given to the inclusion of the following provisions:

(1) A general statement identifying the parties to the agreement, a specific legal description of the lands involved, and the purposes of the agreement;

(2) A statement setting forth the duration of the agreement;

(3) Provisions setting forth the obligations of the contracting parties;

(4) Provisions describing the methods of disposition of production;

(5) Provisions outlining the amount and method of compensation to be paid;

(6) Provisions establishing the accounting procedures to be followed by the operator;

(7) Provisions establishing the operating and management procedures to be followed;

(8) Provisions establishing the operator's rights of assignment;

(9) Bond requirements;

(10) Insurance requirements;

(11) Provisions establishing audit procedures;

(12) Provisions setting forth arbitration procedures;

(13) A *force majeure* provision;

(14) Provisions describing the rights of the parties to terminate or suspend the agreement, and the procedures to be followed in the event of termination of suspension;

(15) Provisions explicitly describing to the best of the operator's knowledge, the nature and schedule of the activities to be conducted;

(16) Provisions clearly describing to the best of the operator's knowledge, future abandonment, reclamation and restoration activities;

(c) In order to avoid delays in obtaining approval, the tribe may confer with the secretary prior to formally executing the agreement, and seek advice as to whether the agreement appears to meet the requirement of § 225.23, or whether modifications, additions or corrections will be required in order to obtain Secretarial approval.

(d) The executed agreement, together with a copy of a tribal resolution authorizing tribal officers to enter into the agreement, shall be forwarded to the Secretary for approval.

§ 225.23 Approval of agreements.

(a) A minerals agreement submitted for approval shall be approved or disapproved within: one hundred and eighty (180) days after submission, or sixty (60) days after compliance, if required, with section 102(2)(C) of the National Environmental Policy Act of 1969 [42 U.S.C. 4332(2)(C)] or any other requirement of Federal law, whichever is later.

(b) In approving or disapproving a minerals agreement, a determination shall be made as to whether the agreement is in the best interest of the Indian tribe or of any individual Indian who may be party to such agreement, and shall consider, among other things: The potential economic return to the Indian owner; the potential environmental, social, and cultural effects; and provisions for resolving disputes that may arise between the parties to the agreement. The Secretary is not required to prepare any study regarding environmental, socioeconomic, or cultural effects of the implementation of a minerals agreement apart from that which may be required under section 102(2)(C), of the National

Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(c) At least thirty (30) days prior to formal approval or disapproval of any minerals agreement, the affected tribe shall be provided with written findings forming the basis of the Secretary's intent to approve or disapprove such agreement. The written findings shall include an environmental assessment which meets the requirements of § 225.49 and an economic assessment as described in § 225.48, if needed. The Secretary may include in the written findings recommendations for changes to the agreement needed to qualify it for approval. The 30-day period shall commence to run as of the date the notice is received by the tribe. Notwithstanding any other law, such findings and all projections, studies, data or other information (other than the environmental assessment required by § 225.49) possessed by the Department of the Interior regarding the terms and conditions of the minerals agreement, the financial return to the Indian parties thereto, or the extent, nature, value or disposition of the Indian mineral resources, or the production, products or proceeds thereof, shall be held by the Department of the Interior as privileged and proprietary information of the affected Indian or Indian tribe. The letter containing the written findings should be headed with:

Privileged Proprietary Information of the (name of tribe or Indian).

(d) A mineral agreement shall be approved by the Secretary if it is determined that the following conditions are met:

(1) The minerals agreement provides a fair and reasonable remuneration to the Indian mineral owner;

(2) The mineral agreement does not have adverse cultural, social, or environmental impact on the Indian lands and community affected, sufficient to outweigh its expected benefits to the Indian mineral owner;

(3) The minerals agreement complies with the requirements of this part, all other applicable regulations, the provisions of applicable Federal law, and applicable tribal law where not inconsistent with Federal law.

(e) The determinations required by paragraphs (b) and (d) of this section shall be based on the written findings required by paragraph (c) of this section.

(f) The question of "fair and reasonable remuneration" within the meaning of paragraph (d)(1) of this section shall be determined by the Secretary based on information obtained from the parties, and any other information considered relevant by the Secretary, including a review of comparable contemporary contractual arrangements or offers for the development of similar mineral resources received by Indian mineral owners, by non-Indian mineral owners, or by the Federal Government, insofar as that information is readily available.

(g) If a representative of the Secretary to whom authority to review proposed minerals agreements has been delegated believes that an agreement should not be approved, a written statement of the reasons why the agreement should not be approved shall be prepared and forwarded, together with the agreement, the written findings required by paragraph (c) of this section, and all other pertinent documents, to the Assistant Secretary—Indian Affairs for decision with a copy to the affected Indian mineral owner.

(h) The Assistant Secretary—Indian Affairs shall review any agreement referred contained a recommendation that it be disapproved, and shall make the final decision for the Department.

Subpart B—Procedures for Competitive Oil and Gas and Geothermal Leases

§ 225.30 Scope.

The regulations in this subpart set forth the procedures to be followed where a tribe or individual Indian mineral owner elects to enter into an oil and gas or geothermal lease through competitive bidding pursuant to the Act of May 11, 1938 (25 U.S.C. 396a-g), which governs the leasing of tribal lands, or the Act of March 3, 1909 (25 U.S.C. 396), which governs leasing of allotted lands. A lease may be entered into through competitive bidding under the procedures in this Subpart, or by negotiation under the procedures in Subpart A, or through a combination of both competitive bidding and negotiation. This section is not meant to preclude the use of competitive bidding when a tribe is using the 1982 Act as the contracting authority.

§ 225.31 Procedures for awarding leases.

(a) Competitive oil and gas and geothermal leases by tribal mineral owners shall be entered into in accordance with the procedures of paragraph (c) of this section. However, if no satisfactory bid is received, or if the accepted bidder fails to complete the lease, or if the Secretary determines that it is not in the best interest of the Indian mineral owner to accept the highest bid, the Secretary may readvertise the lease for sale, subject to the consent of the Indian mineral owner, or the lease may be let through private negotiations.

(b) Indian mineral owners may also request the Secretary to prepare, advertise, negotiate, and/or award an oil and gas or geothermal lease on their behalf. If so requested, the Secretary shall undertake such responsibility in accordance with the procedures of paragraph (c) of this section and, where applicable, the provisions of paragraph (a) of this section. If requested by a potential prospector or operator interested in acquiring lease rights to Indian-owned oil and gas or geothermal resources, the Secretary shall promptly notify the Indian mineral owner thereof, and advise the owner in writing of the alternatives available, and that the owner may decline to permit leasing, exploration or production.

(c) When the Secretary exercises the authority to enter into leases on behalf of individual Indian mineral owners, or when requested by the Indian mineral owner under paragraph (b) of this section to assume the responsibility of awarding the contract, the Secretary shall offer a lease to the highest responsible qualified bidder subject to the following procedures, unless it is determined in accordance with paragraph (a) of this section that the highest return can be obtained by other methods of contracting (such as negotiation):

(1) Leases shall be advertised for a bonus consideration under sealed bid, oral auction, or a combination of both, and a notice of such advertisement shall be published in at least one local newspaper at least 30 days in advance of sale or such longer time as is necessary to achieve optimum competition. If applicable, such notice must identify the reservation within which the tracts to be leased are found. No specific description of the tracts to be leased need be published. Specific descriptions of such tracts shall be available at the office of the Superintendent upon request. The complete text of the advertisement including a specific description of the tracts, will be mailed to each person listed on the agency mailing list.

(2) The advertisement shall specify any terms requested by the Indian mineral owner and may, where sufficient information exists, and after consultation with the Authorized Officer, permit bidders to compete on such terms as rental and royalty rates as well as upon bonus payment; and it shall provide that the Secretary reserves the right to reject any or all bids, and that acceptance of the lease bid by or on

behalf of the Indian mineral owner is required.

(3) Each bid must be accompanied by a cashier's check, certified check, or postal money order or any combination thereof, payable to the payee designated in the advertisement, in an amount not less than 25 percent of the bonus bid, which will be returned if that bid is unsuccessful.

(4) A successful bidder must, within 30 days after notification of the bid award, remit to the Secretary the balance of the bonus, the first year's rental, a $25 filing fee, her/his share of the advertising costs, and file with the Secretary all required bonds. The successful bidder shall also file the lease in completed form at that time. However, for good and explicit reasons, the Secretary may grant an extension of up to 30 days for filing of the lease. Failure on the part of the bidder to comply with the foregoing will result in forfeiture of the required payment of 25 percent of any bonus bid for the use and benefit of the Indian oil and gas owner.

(d) When the Indian mineral owner has requested the Secretary to offer a lease to the highest responsible qualified bidder in accordance with paragraph (c) of this section, the Secretary shall advise the Indian mineral owner of the results of the bidding, and shall not award the lease contract to any bidder until the consent of the Indian mineral owner has been obtained.

§ 225.32 Duration of leases.

(a) No competitive oil and gas or geothermal lease with an Indian mineral owner shall exceed a term of ten (10) years and as long thereafter as oil and gas or geothermal resources are produced in paying quantities.

(b) Where an oil and gas or geothermal lease specifies a term of years and "as long thereafter as oil and gas or geothermal resources are produced in paying quantities" or similar phrase, the term "paying quantities" shall generally mean: Lease production of oil and/or gas or geothermal resources of sufficient value to exceed direct operation costs plus the cost of lease rentals or minimum royalty.

(c) A lease which provides that it shall continue in force and effect beyond the expiration of the primary term if drilling operations have been commenced during the primary term, shall continue in force and effect beyond the expiration date of the primary term if the lessee has commenced actual drilling with a rig designed to reach the total proposed depth by midnight of the last day of the primary term and such drilling is continued with reasonable diligence until the well is completed to production or abandoned.

§ 225.33 Rentals; minimum royalty; production royalty on oil and gas leases.

(a) An oil and gas lessee shall pay, in advance, beginning with the effective date of the lease, an annual rental of such rate authorized by the Secretary. This rental shall not be credited on production royalty or prorated or refunded because of surrender or cancellation or for any other reason.

(b) If the royalty on oil and gas production paid during any year aggregates less than $2.50 per acre, the lessee must pay the difference at the end of the lease year. On communitized and unitized leases, the minimum royalty shall be payable only on participating acreage.

(c) Unless otherwise authorized by the Secretary, a royalty of not less than 16⅔ percent shall be paid on the value of all oil and gas, and products extracted therefrom from the land leased.

(d) During the period of supervision, "value" for the purpose of the lease shall be calculated in accordance with applicable rules and regulations in 30 CFR.

(e) If the leased premises produce gas in excess of the lessee's requirements for the development, and operation of said premises, gas shall, if requested by the lessor, be furnished by the lessee to the Indian oil and gas owner. Such gas furnished shall be received by the Indian oil and gas owner and title shall pass at the wellhead or at the alternate point of transfer designated by the lessee, and the Indian mineral owner shall pay a price therefor equal to the current wellhead price, less royalty, or if gas is not being sold, the price to be paid by the Indian oil and gas owner shall equal the highest price that could be obtained from another gas purchaser, less royalty. In addition to the above payments, the Indian oil and gas owner shall pay for the gas transfer installation and a reasonable fee to the lessee for meter maintenance, gas volume determination, accounting and other operational costs incurred as a result of any such purchase by the Indian oil and gas owner. The acquisition and use of any such gas purchased by the Indian oil and gas owner shall be at the Indian oil and gas owner's sole risk at all times. *Provided,* that this requirement shall be subject to the determination by the Superintendent, that gas in sufficient quantities is available above that needed for lease operation, and that waste would not result, and the gas is not subject to any pre-existing sales contracts, or disposition of such gas is not otherwise provided for in the lease. Where an arrangement is made to furnish gas to the Indian oil and gas owner pursuant to this section, it may be terminated only with the approval of the Secretary.

§ 225.34 Contracts for subsurface storage of oil and gas.

(a) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, storage contracts or modifications, amendments or extensions of oil and gas leases or other contracts, on tribal lands subject to lease or contract under the Act of May 11, 1938 (52 Stat. 347; 25 U.S.C. 396a), and on allotted lands subject to lease or contract under the Act of March 3, 1909 (35 Stat. 783; 25 U.S.C. 396), to provide for subsurface storage of oil or gas, irrespective of the lands from which production is initially obtained. The storage contract or modification, amendment, or extension, shall provide for the payment of such fee or rental, or in lieu thereof, for a royalty or percentage payment. All such fees, rentals, royalty or percentage payments shall be in addition to any royalties or rentals required by any lease committed to such a storage agreement.

(b) The Secretary may approve, subject to obtaining the prior consent of the Indian oil and gas owners, a provision in an oil and gas contract under which storage of oil or gas is authorized for continuance of the contract at least for the period of such storage use and so long thereafter as oil or gas not previously produced, is produced in paying quantities.

(c) Applications for subsurface storage of oil or gas shall be filed in triplicate with the Secretary and shall disclose the ownership of the lands involved, the parties in interest, the storage fee, rental, or royalty offered to be paid for such storage, and all essential information showing the necessity for such project.

§ 225.35 Surrender of leases.

A lessee may, with the approval of the Secretary, surrender a lease or any part of it, on the following conditions:

(1) The lessee shall requested the Secretary to terminate the lease and pay a $25 filing fee.

(2) All royalties and rentals due on the date the request for termination is made must be paid.

(3) The Superintendent, after consultation with the Authorized Officer, must be satisfied that proper provisions have been made for the conservation and protection of the property, and that all wells drilled on the portion of the lease surrendered

have been properly abandoned or conditioned, whichever is required.

(4) If a lease has been recorded, the lessee must submit a recorded release of the acreage covered by the request.

(5) If a lessee requests termination of an entire lease or an entire undivided portion of a lease, she/he must surrender the lease; provided that where the request is made by an assignee to whom no copy of the lease was delivered, the assignee must surrender only her/his copy of the assignment.

(6) If the lease, or a portion thereof, being terminated is owned in undivided interests by more than one party, all parties owning undivided interests in the lease must join in the request for termination.

(7) No part of any advance rental shall be refunded to the lessee, nor shall the lessee be relieved of the obligation to pay advance rental when it becomes due, by reason of any other subsequent surrender or termination of a lease or a portion thereof.

(8) If oil and gas is being drained from the leased premises by a well or wells located on lands not included in an Indian oil and gas lease, the Secretary reserves the right to impose reasonable and equitable terms and conditions on the termination of the lease to protect the interests of the Indian oil and gas owners of the lands surrendered, such as payment of compensatory royalty for any drainage.

§ 225.36 Forms.

Leases, bonds, permits, assignments, and other instruments relating to competitive oil and gas or geothermal leasing shall be on forms prescribed by the Secretary which may be obtained from the Superintendent or other officer having jurisdiction over the land.

Subpart C—General

§ 225.40 Scope.

This subpart sets forth general requirements which are applicable to any contract for the development of Indian oil and gas or geothermal resources entered into pursuant to this part.

§ 225.41 Authority and responsibility of the Bureau of Land Management.

The functions of the Bureau of Land Management are defined by 43 CFR Part 3160—Onshore Oil and Gas Operations, and 43 CFR Part 3260—Geothermal Resources Operations and currently include resource evaluation, approval of drilling permits and mining or production plans, and inspection. More detailed responsibilities are provided for in prevailing Memorandums of Understanding between Bureaus assigned responsibility for lease administration.

§ 225.42 Authority and responsibility of the Minerals Management Service (MMS).

Functions of the Minerals Management Service are defined under regulations contained in 30 CFR Part 200—Royalty Management. The Minerals Management Service is assigned the responsibility for all accounting work necessary for the proper computation and recording of royalties accruing to the benefit of Indians. Specific duties and responsibilities of the Minerals Management Service are further delineated in an existing Memorandum of Understanding between the Bureau of Indian Affairs and the Minerals Management Service.

§ 225.43 Approval of amendments to contracts.

(a) An amendment, modification or supplement to a contract entered into pursuant to the regulations in this part, must be approved by the Secretary. The Secretary may approved and amendment, modification, or supplement if it is determined that the contract, as modified, meets the criteria for approval set forth in § 225.23, or of the competitive lease meets the criteria for approval in § 225.31.

(b) An amendment to or modification of a contract for the exploration, development and production of Indian-owned oil and gas or geothermal resources, which was approved prior to the effective date of these regulations, shall be approved by the Secretary if the entire lease meets the criteria set forth in § 225.23 or § 225.31 of this part. When appropriate, the Secretary shall prepare a written economic assessment of the amendment or modification pursuant to paragraph (a) of § 225.48 of this part, and an environmental and cultural assessment pursuant to § 225.49 of this part.

§ 225.44 Geological and geophysical permits.

(a) Permits to conduct geological and geophysical operations on Indian lands which are not included in an oil and gas or geothermal contract entered into pursuant to this part, may be approved by the Secretary with the consent of the Indian owner under the following conditions:

(1) The permit must describe the area to be explored, the duration and consideration to be paid the Indian owner;

(2) The permit will not grant the permittee any option or preference rights to a lease or other development contract, or authorize the production of or removal of oil and gas or geothermal unless specifically so stated in the permit;

(3) The permittee shall pay for all damages to growing crops, any improvements on the lands, and all other surface damages resulting from operations conducted on the permitted lands;

(4) A copy of all data collected pursuant to operations conducted under the permit shall be forwarded to the Secretary and made available to the Indian owner, when so provided in the permit. Data collected under a permit shall be held by the Secretary as privileged and proprietary information for the time prescribed in the permit. Where no time period is prescribed in the permit, the Secretary may release such information upon request.

(5) In instances where the Indian owner is also the surface land owner, the Indian owner shall obtain any additional necessary permits or rights of ingress or egress from any other surface user, permittee, lessee, or allottee on her/his land needed for the geological permittee to enter onto the land to conduct exploratory operations. In instances where the Indian owner is not the surface owner, the Indian owner shall lend all possible assistance to the geological permittee in obtaining any such additional necessary permits or rights of ingress or egress; and

(6) A permit may be granted by the Secretary without the consent of the individual Indian owners if:

(i) The land is owned by more than one person, and the owners of a majority of the interests therein consent to the permit;

(ii) The whereabouts of the owner of the land or an interest therein is unknown, and the owner or owners of any interests therein whose whereabouts is known, or a majority thereof, consent to the permit; or

(iii) The heirs or devisees of a deceased owner of the land or an interest therein have not been determined, and the Secretary finds that the permit activity will cause no substantial injury to the land or any owner thereof; or

(iv) The owners of interests in the land are so numerous that the Secretary finds it would be impractical to obtain their consent, and also finds that the permit activity will cause no substantial injury to the land or any owner thereof.

(b) A permit to conduct geological and geophysical operations on Indian lands included in an oil and gas or geothermal contract entered into pursuant to this part, will not be required of the operator in the absence of provisions in the contract requiring that a permit be obtained. If a permit is to be required, the contract shall state the procedures for obtaining approval of the permit.

§ 225.45 Removal of restrictions.

(a) Notwithstanding the provisions of any oil and gas or geothermal contract to the contrary, the removal of all restrictions against alienation shall operate to divest the Secretary of all supervisory authority and responsibility with respect to the contract. Thereafter, all payments required to be made under the contract shall be made directly to the oil and gas or geothermal owner(s).

(b) In the event restrictions are removed from a part of the land included in any contract to which this part applies, the entire contract shall continue to be subject to the supervision of the Secretary until such times as the holder of the contract and the unrestricted Indian owner, shall furnish to the Secretary satisfactory evidence that adequate arrangements have been made to account for the oil and gas or geothermal resources of the restricted land separately from those of the unrestricted. Thereafter, the unrestricted portion shall be relieved from supervision of the Secretary, and the restricted portion shall continue subject to such supervision as is provided by the Secretary, the contract, the regulations of this part, and all other applicable laws and regulations.

(c) Should restrictions be removed from only part of the acreage covered by a contract agreement, which provides that payments to the oil and gas or geothermal owners shall thereafter be paid to each owner in the proportion which her/his acreage bears to the entire acreage covered by the contract, the operator on any unrestricted portion shall continue to be required to make the reports required by the regulations in this part with respect to the beginning of drilling operations, completion of wells, and production, the same as if no restrictions had been removed. In the event the unrestricted portion of the contracted premises is producing, the operator will also be required to pay the portion of the royalties or other revenue due the Indian owner at the time and in the manner specified by the regulations in this part.

§ 225.46 Oil and gas and geothermal contracts of undivided inherited lands.

(a) The Secretary may execute oil and gas or geothermal contracts on behalf of unknown owners of future contingent interests, and on behalf of minors without a legal guardian, and on behalf of persons who are legally incompetent.

(b) If the allottee is deceased and the heirs to or devisees of any interest in the allotment have not been determined, or some or all of them cannot be located, contracts for the development of such interests may be executed by the Secretary, provided that such interests have been offered for sale under provision of § 225.31.

(c) If an owner is a life tenant, and the division of rents and royalties is not clearly expressed in the document creating the life estate, the contract shall be accompanied by an agreement between the life tenant and the remainderman providing for the division of rents and royalties. The agreement is subject to the approval of the Secretary.

(d) The Secretary may approve a contract where less than 100 percent of the undivided mineral interest is committed to the contract and the Secretary has determined it to be in the best interest of the Indian owners, provided that:

(1) A contract approved by the Secretary pursuant to this paragraph shall include only the oil and gas or geothermal interests of the consenting Indian owners.

(2) Sixty-six and two thirds percent or more of the undivided oil and gas or geothermal interest is committed to the lease;

(3) The operator is required to submit a certified statement containing evidence that the non-consenting Indian owners have been contacted and have refused to consent to the lease; and

(4) The operator is required to submit, and obtain the approval of the Secretary to, a plan describing how the operator will account to the non-consenting Indian owners for all income attributable to their undivided interest.

(e) The Secretary shall provide all known non-consenting Indian owners with a certified written notice that a contract has been approved without their consent, that affects their undivided interest along with a copy of the operator's plan for accounting for their interest.

§ 225.47 Persons signing in a representative capacity.

(a) The signing in a representative capacity and delivery of bids, geological and geophysical permits, oil and gas or geothermal agreements or assignments, bonds, or other instruments required by these regulations, constitutes certification that the individual signing (except a surety agent) is authorized to act in such capacity. An agent for a surety shall furnish a satisfactory power of attorney.

(b) A corporation proposing to acquire an interest in a permit or a contracted real property interest in Indian-owned oil and gas or geothermal resources, shall have on file with the Superintendent a statement showing:

(1) The State(s) in which the corporation is incorporated, and that the corporation is authorized to hold such interests in the State where the land described in the instrument is situated;

(2) That it has power to conduct all business and operations as described in the instrument.

(c) The Secretary may, either before or after the approval of a permit, contract, assignment, or bond, call for any reasonable additional information necessary to carry out the regulations in this part, other applicable laws and regulations, and the trust responsibility to the Indian owner.

§ 225.48 Economic assessments.

An economic assessment, where required, shall be prepared by the Secretary and shall take into consideration the following where applicable:

(a) Whether there are assurances in the oil and gas or geothermal contract that operations shall be conducted with appropriate diligence;

(b) Whether the production royalties or other form of return on oil and gas or geothermal resources is adequate; and

(c) When a method of contracting for development of oil and gas other than by the competitive bidding procedures is used, whether that method is likely to provide the Indian oil and gas owner with a share of the return on the production of her/his oil and gas equal to what the owner might otherwise obtain through competitive bidding, when such a comparison can readily be made.

§ 225.49 Environmental assessments.

(a) An environmental assessment shall be prepared or caused to be prepared by the Secretary in accordance with regulations promulgated by the Council for Environmental Quality, 40 CFR 1508.9, and 30 BIAM Supplement 1 and 516 DM 1–7. When it is determined prior to the preparation of the assessment that an environmental impact statement needs to be prepared prior to approval of the contract, preparation of that environmental impact statement may be regarded as satisfying the requirements of this section. Prior to contract approval, the environmental assessment shall be made available to the Indian owner and to the governing body of the affected Indian tribe, and shall also be made available for public review at the Bureau office having jurisdiction over the proposed contract.

(b) In order to make a determination of the effect of the contract on prehistoric, historic, architectural, archeological, cultural, and scientific resources, in compliance with the National Historic Preservation Act, 16 U.S.C. 470 *et seq.*, Executive Order 11593 (May 1971), and regulations promulgated thereunder, 36 CFR Parts 60, 63, and 800, and the Archeological and Historic Preservation Act, 16 U.S.C. 469a-1 *et seq.*, the Secretary shall, prior to approval of a contract, perform surveys or cause surveys to be made to determine the effect of the exploration and production activities on properties which are listed in the National Register of Historic Places, 16 U.S.C. 470a, or are eligible for listing in the National Register. If the surveys indicate that properties listed in or eligible for listing in the National Register will be affected, the Secretary shall seek the comments of the Advisory Council on Historic Preservation pursuant to 36 CFR Part 800. If the oil and gas or geothermal development will have an adverse effect on such properties, the Secretary shall ensure that the properties will either be avoided, the effects mitigated, or the data describing the historic property preserved.

§ 225.50 Bonds.

(a) The Secretary may require a geological or geophysical permittee or operator to furnish surety bonds in such amount deemed appropriate.

(b) Before beginning drilling operations, the operator shall furnish a bond in an amount to be determined by the Secretary and the approving official, but in no event less than $10,000.

(c) In lieu of the drilling bond required under paragraph (b) of this section, the operator may file one bond of $50,000 for all oil and gas or geothermal contracts in any one State, or such lesser jurisdiction as determined by the Secretary, including contracts on that part of an Indian reservation extending into States contiguous thereto, to which the operator may become a party. The total acreage covered by such bond shall not exceed 10,240 acres.

(d) In lieu of the bonds required under paragraphs (a), (b), and (c) of this section, an operator or permittee may file with the Secretary a bond in the sum of $150,000 for full nationwide coverage for all contracts and permits without geographic or acreage limitations.

(e) Bonding shall be by corporate surety bonds.

(f) In lieu of a bond required by this section, an irrevocable letter of credit may be submitted for the same amount as a bond.

(g) The right is specifically reserved to the Secretary to increase or decrease the amount of bonds or letters of credit at her/his discretion.

§ 225.51 Manner of payments.

Unless otherwise provided in an approved contract, all payments shall be paid to the Secretary or such other party as she/he may designate, and shall be made at such time as provided in the advertisement, permit, or mineral agreement.

§ 225.52 Permission to start operations.

(a) No exploration or drilling operations are permitted on any contract area before the effective date of the oil and gas or geothermal contract. The effective date of the contract shall be the date the contract is officially approved by the Secretary pursuant to the regulations in this part.

(b) Written permission must be secured from the Secretary before any operations are started on the contract premises, in accordance with applicable rules and regulations in Title 43 CFR, Parts 3160 and 3260, and Orders or Notice to Lessees (NTL) issued thereunder. After such permission is secured, operations must be in accordance with all applicable operating rules and regulations promulgated by the Secretary of the Interior. Copies of applicable regulations may be secured from either the Authorized Officer or the Superintendent and no operations should be undertaken without a study of such regulations.

§ 225.53 Assignments and overriding royalties and operating agreements.

(a) Assignments. An assignment of oil and gas or geothermal contracts or any interest therein, shall not be valid without the approval of the Secretary and the Indian owner, if approval of the Indian owner is required in the contract. The assignee must be qualified to hold such contract under existing rules and regulations and shall furnish a satisfactory bond conditioned on the faithful performance of the convenants and conditions thereof. An operator must assign either her/his entire interest in a contracted area or a legal subdivision (which may be a separate horizon) thereof, or an undivided interest in the whole lease or contracted area:

Provided, that when an assignment covers only a legal subdivision of a contract area or covers interests in separate horizons, such assignment shall be subject to both the consent of the Secretary and the Indian owner. If a contract area is divided by the assignment of an entire interest in any part, each part shall be considered a separate contract, and the assignee shall be bound to comply with all terms and conditions of the original contract. A fully executed copy of the assignment shall be filed with the Secretary within 30 days after the date of the execution by all parties. The Secretary may permit the release of any bonds executed by the assignor upon execution of satisfactory bonds by the assignee.

(b) Overriding royalties and operating agreements. Agreements creating overriding royalties or payments out of production and agreements designating operators shall not be considered assignments, and the approval of the Department of the Interior or any agency thereof shall not be required with respect thereto. Such agreements shall be construed as not modifying any of the obligations of the operator with the Indian owner under her/his contract and the regulations in this part, including requirements for Departmental approval before abandonment. All such obligations are to remain in full force and effect, the same as if free of any such royalties or payments. Such agreements shall be filed with the Secretary unless incorporated in assignments or instruments required to be filed pursuant to paragraph (a) of this section.

§ 225.54 Suspension of production; remedial workover/shut-in.

(a) The Secretary may under such terms and conditions as she/he may prescribe, authorize suspension of producing requirements in the extended contract term whenever it is determined that remedial operations are in the best interest of the Indian mineral owner. *Provided,* that such remedial operations are conducted with reasonable diligence during the period of nonproduction according to the provisions in 43 CFR 3162.3-2. Any suspension under this paragraph shall not relieve the operator from liability for the payment of rental and minimum royalty or other payments due under the terms of the contract.

(b) An application for permission to suspend producing requirements for economic or marketing reasons on an oil and/or gas or geothermal well capable of commercial production which is submitted to the Secretary after the expiration of the primary term of the contract must be accompanied by the written consent of the Indian mineral owner and a written agreement executed by the parties setting forth the terms pertaining to the suspension of production.

(c) No approval shall be required for a suspension of production which occurs within the primary term of the contract.

§ 225.55 Unitization and communitization agreements; and well spacing requirements.

(a) *Unitization and communitization agreements.* (1) For the purpose of promoting conservation and efficient utilization of natural resources, the Secretary, with the consent of the Indian mineral owner, may approve a cooperative unit, drilling or other development plan on any contracted area upon a determination that approval is advisable and in the best interest of the Indian owner. For the purposes of this section, a cooperative or other plan means an agreement for the development or operation of a specifically designated area as a single unit without regard to separate ownership of the land included in the agreement. Such agreements include unit agreements and other types of agreements which allocate costs and benefits.

(2) Where individual or tribal Indian owners have consented in an oil and gas or geothermal contract to include their lands in a cooperative or other development plan, further consent of such owners shall not be required to obtain the approval of a proposed agreement by the Secretary.

(3) A request for approval of a cooperative plan shall be filed with the Superintendent which must comply with the requirements of all applicable rules and regulations.

(4) All Indian owners of any right, title or interest in the oil and gas or geothermal resources to be unitized are proper parties to the proposed agreement, and must be invited to join the agreement unless prior consent to unitization has been given. If any Indian oil and gas or geothermal owner refuses to join in an agreement, the request for approval shall include: an affidavit certifying that reasonable efforts were made to obtain her/his consent, and a copy of a return receipt showing that an invitation to join the unit was mailed to the Indian owner by certified mail at her/his last known mailing address.

(5) A request for approval of a proposed agreement, and documents incident to such agreements, should be filed with the Superintendent ninety (90) days prior to the expiration date of the first Indian oil and gas or geothermal contract to expire in the unit.

(6) Prior to approving or disapproving a proposed agreement, the Superintendent shall obtain the recommendation of the Authorized Officer for approval or disapproval, based upon the engineering and technical aspects of the agreement.

(7) Approval shall be retroactive to the date the proposed agreement was submitted to the Department or the date that first production occurred within the unit, whichever is earlier. Review of the agreement shall be primarily concerned with engineering and technical aspects of the agreement and shall generally not consider the other terms and conditions of affected leases (e.g., royalty rate and bonuses).

(8) Any oil and gas or geothermal contract committed in part to any such agreement shall be segregated into separate minerals contracts or leases as to the lands committed and lands not committed to the agreement. Such segregation shall be effective the date the agreement is approved by the Secretary.

(b) Well spacing requirements: Each well within a cooperative unit shall be drilled in conformity with an acceptable well spacing program at a surveyed well location approved or prescribed by the Authorized Officer after appropriate environmental and technical reviews. An acceptable well spacing program may be,

(1) A program which conforms to a spacing order or field rule which is acceptable to the Authorized Officer;

(2) A program which proposes drilling a well on lands committed to an agreement at a location approved by the Authorized Officer, or

(3) Any other well spacing approved by the Authorized Officer.

§ 225.56 Inspection of premises; books and accounts.

(a) Operators shall allow Indian owners, their representatives or any authorized representative of the Secretary to enter all parts of the contracted premises for the purpose of inspection only at their own risk. Books and records shall be available only during business hours. Operators shall keep a full and correct account of all operations and make reports thereof, as required by the contract and applicable regulations.

(b) Records will be provided to the Minerals Management Service (MMS) in accordance with MMS regulations and guidelines. Such records will be safeguarded by MMS in accordance with appropriate laws, regulations, and guidelines.

(c) Records will be provided to the Authorized Officer in accordance with BLM regulations and guidelines. Such records will be safeguarded by BLM in accordance with appropriate laws, regulations and guidelines.

§ 225.57 Termination and cancellation; enforcement of orders.

(a) If the Secretary determines that a permittee or operator has failed to comply with the regulations in this part, other applicable laws or regulations, the terms of the permit or contract, her/his orders, or the orders of the Authorized Officer and such noncompliance does not threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources, the Secretary shall serve a notice of noncompliance upon the permittee or operator by delivery in person or by certified mail to the permittee or operator at her or his last known address. Failure of the permittee or operator to take action in accordance with the notice of noncompliance, within the time limits specified by the Secretary, shall be grounds for suspension of operations subject to such notice by the Superintendent, or grounds for the Superintendent's recommendations for the initiation of action for cancellation of the lease, permit, license, or contract and forfeiture of any compliance bonds.

(b) The notice of noncompliance shall specify in what respect the permittee or operator has failed to comply with the provisions of applicable laws, regulations, terms of the permit or contract, or the orders of the Secretary or the Authorized Officer, and shall specify the action which must be taken to correct such noncompliance and the time limits within which such action shall be taken. A written report shall be submitted by the permittee or operator to the Secretary within 10 days of the time such noncompliance has been corrected.

(c) If, in the judgment of the Secretary, a permittee or operator is conducting activities on lands subject to the provisions of this part:

(1) Which fail to comply with the provisions of this part, other applicable laws or regulations, the terms of the minerals agreement, the requirements of an approved exploration or drilling plan, her/his orders or the orders of the Authorized Officer, and

(2) Which threaten immediate and serious damage to the environment, the well or the oil and gas or geothermal resources being developed, or other valuable mineral deposits or other resources; the Secretary shall order the immediate cessation of such activities without prior notice of noncompliance.

The Secretary shall, however, as soon after issuance of the cessation order as possible, serve on the permittee or operator a statement of the reasons for the cessation order and the actions needed to be taken before the order will be lifted.

(3) Such orders shall be immediately effective.

(d) If a permittee or operator fails to take action in accordance with the notice of noncompliance served upon her/him pursuant to paragraph (a) of this section, or if a permittee or operator fails to take action in accordance with the cessation order statement served upon her/him pursuant to paragraph (c) of this section, the Secretary may issue a notice of intent to cancel the minerals agreement specifying the basis for notice. The permittee or operator shall have 30 days from receipt of the notice to present evidence as to why the minerals agreement should not be cancelled.

(e) No provision in this section shall be interpreted as replacing or superseding any other remedies of the Indian mineral owner as set forth in the minerals agreement or otherwise available at law.

(f) Nothing in this section is intended to supersede the independent authority of the Authorized Officer and/or the MMS official. However, the Authorized Officer, the MMS official, and the Secretary should consult with one another, when feasible, before taking any enforcement actions.

(g) All notices of non-compliance or orders of cessation or contract cancellation may be appealed pursuant to 25 CFR Part 2. *Provided*, appeals of cessation orders under this part shall not relieve the permittee or operator from the obligation to immediately comply therewith.

§ 225.58 Penalties.

(a) Violations of the terms and conditions of any permit, or the regulations in this part, or failure to comply with a notice of noncompliance or a cessation order issued pursuant to § 225.57, may subject a permittee to a penalty of not more than $1,000 per violation per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action. Similarly, violations of the terms and conditions of any contract, other than those relating to operational or royalty management matters, the regulations in this part, or failure to comply with a notice of noncompliance or cessation order issued in that regard pursuant to § 225.57, may subject the operator to a penalty of not more than $1,000 per day for each day that such violation or noncompliance continues beyond the time limits prescribed for corrective action.

(b) A notice of proposed penalty shall be served on the permittee or operator either personally or by certified mail. The notice shall specify the nature of the violation and the proposed penalty, and shall advise the permittee or operator of the right to either request a hearing within 30 days from receipt of the notice, or pay the proposed penalty. Hearings shall be held before the Superintendent, whose findings shall be conclusive, unless an appeal is taken pursuant to § 225.59 of this part. A request for a hearing does not stop the running of penalties for continuing non-compliance.

(c) Payment in full of penalties more than 10 days after final notice that a penalty has been imposed, shall subject the permittee or operator to late payment charges. Late payment charges shall be calculated on the basis of a percentage assessment rate of the amount unpaid per month for each month or fraction thereof until payment is received by the Secretary. In the absence of a specific permit or contract provision prescribing a different rate, the interest rate on late payments and under payments shall be a rate applicable under section 6621 of the Internal Revenue Code of 1954. Interest will be charged only on the amount of payment not received and only for the number of days the payment is late.

(d) Permittees and operators also may be subject to penalties under other applicable rules and regulations, or under the terms of an approved contract. None of the provisions of this section shall be interpreted as:

(1) Replacing or superseding the independent authority of the Authorized Officer and/or the MMS Official to issue notices of violations or to impose assessments and/or penalties for violations of applicable regulations pursuant to the authority granted under 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II; or

(2) Replacing or superseding any penalty provision in the terms and conditions of a permit or contract approved by the Secretary pursuant to this part.

§ 225.59 Appeals.

(a) Appeals from decisions of Bureau of Indian Affairs officers under this part may be taken pursuant to Part 2 of this title.

(b) Notices of violations, cessation orders, assessments, or proposed penalties issued pursuant to this part, 43 CFR Parts 3160 and 3260 or 30 CFR Chapter II shall not be suspended as a result of an administrative review, hearing on the record, or the taking of an appeal, unless such suspension is ordered in writing by the official before whom such an administrative review, hearing on the record, or appeal is pending, and then only upon a written determination by such official that such suspension will not be detrimental to the Indian owner, or upon submission of a bond deemed adequate by both the Indian owner and the Secretary to indemnify the Indian owner from any resulting loss or damage.

§ 225.60 Fees.

Unless otherwise authorized by the Secretary, each permit, lease, sublease, or other contract, or assignment or surrender thereof, shall be accompanied by a filing fee of not less than $25. All fees collected pursuant to this section, shall be deposited in the General Treasury Fund pursuant to the requirements of 25 U.S.C. 413.

§ 225.61 No oil and gas or geothermal agreements made with Government employees.

No employee of the BIA or Indian Health Service (IHS) shall enter into or be a party to any oil and gas or geothermal contract, assignment thereof, or interest therein involving trust or restricted Indian-owned mineral interests. See 18 U.S.C. 437.

§ 225.62 Sales contracts, division orders and other division of interest documents.

Sales contracts, division orders and other division of interest documents necessary under this part shall be regulated by 30 CFR Parts 207 and 210.

Ross O. Swimmer,
Assistant Secretary, Indian Affairs.

[FR Doc. 87-19199 Filed 8-21-87; 8:45 am]
BILLING CODE 4310-02-M